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PETITION

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1775

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA and CHARLES W. HANNON, Stockholders of Penn Central Company,

Petitioners,

v.

PENN CENTRAL CORPORATION, formerly PENN CENTRAL TRANSPORTATION COMPANY, PENN CENTRAL COMPANY and THE UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AT NOS. 78-1715, 78-2321 AND 78-2336.

PETITION FOR A WRIT OF CERTIORARI

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This petition is related to a petition being filed at the same time, *Dr. Robin S. Key, etc., v. Penn Central Corporation, etc., et al.*

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Petitioners, Joseph A. Schafer, Whitney W. Irons, Alton P. Gainer, Emil Milan, Carol Kuchar, Leo Sukala, Stephen Sloboda and Charles W. Hannon, stockholders of Penn Central Company, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit, rendered in these proceedings on January 11, 1979 (12a*), affirming orders of the United States District Court

* This refers to page 12 of the appendix to this petition, printed separately. The appendix is also the appendix to the petition of Dr. Robin S. Key.

for the Eastern District of Pennsylvania, and an order (10a) entered on the same date dismissing other appeals from the District Court.

Opinions and Judgments Below

The District Court entered an order on August 16, 1976, continuing Penn Central Company (referred to hereinafter as "the holding company" and sometimes referred to in the lower courts as "PCC") in possession under Chapter XI of the Bankruptcy Act, 11 U.S.C. § 701 *et seq.*, without opinion. A copy of the order is reproduced in the appendix at pages 217a-221a. The District Court entered an order approving the plan of reorganization of Penn Central Transportation Company ("PCTC" or "the railroad") on March 17, 1978, with opinion. The order and the parts of the opinion relating to petitioners are printed in the appendix at pages 134a-216a and the opinion is reported at 358 F.Supp. 1234 (E.D.Pa. 1978). A District Court bankruptcy judge entered an order on April 21, 1978, authorizing the holding company, as sole stockholder of the railroad, to vote in favor of the amended plan of reorganization filed by the trustees for PCTC, without opinion. The order is printed in the appendix at 133a.

The bankruptcy judge entered an order on August 3, 1978, for petitioners to show cause why a motion of the holding company for summary judgment dismissing petitioners' adversary complaint should not be granted, without opinion. The order is printed in the appendix at 132a. The bankruptcy judge denied motions of petitioners for a continuance and for leave to take discovery and granted the holding company's motion for summary judgment at a hearing on August 16, 1978. The part of the transcript, deciding these motions, is printed in the appendix at 131a.

The District Court entered an order confirming the railroad plan of reorganization and an order directing that the plan be consummated on August 17, 1978, with opinion. The confirmation order is printed in the appendix at 99a-106a; the consummation order is printed in the appendix at 49a-98a; and, the part of the opinion relating to petitioners is printed in the appendix at 107a-130a and is reported at 458 F.Supp. 1364 (E.D.Pa. 1978). The bankruptcy judge entered an order confirming the plan of arrangement of the holding company under Chapter XI on August 21, 1978, without opinion. The order is reproduced in the appendix at 46a-48a. The District Court entered an order affirming the order of the bankruptcy judge granting summary judgment dismissing the adversary complaint on October 10, 1978, without opinion. The order is printed in the appendix at 45a. The District Court entered an order affirming the order of the bankruptcy judge, confirming the plan of arrangement of the holding company on October 12, 1978, without opinion. The order is printed in the appendix at 44a.

The Court of Appeals entered an order on October 17, 1978, denying a motion by petitioners for a stay of consummation of the railroad plan of reorganization and the holding company plan of arrangement, without opinion. The order is printed in the appendix at 42a-43a. Associate Justice William J. Brennan, Jr., of this court, denied a similar application for a stay on October 23, 1978, without opinion. A copy of a letter from the clerk of this court, advising of this endorsement, is printed in the appendix at 41a. This court denied the same application, after it was readdressed to the Chief Justice and referred to the court, on November 13, 1978. A letter from the clerk advising of the entry of this order is printed in the appendix at 40a.

The bankruptcy judge entered an order on December 12, 1978, dismissing an adversary complaint filed by Dr. Robin S. Key and denied the motion of Dr. Key to have the Chapter XI case proceed under Chapter X of the Bankruptcy Act, with opinion. The order and opinion are printed in the appendix at 37a-39a, and the opinion is unreported.

The Court of Appeals entered judgment affirming the orders of the District Court, filed October 10, 1978, and October 12, 1978, and entered an order dismissing appeals from orders of the District Court dated March 17 1978, and August 17, 1978, with opinion. The judgment is printed in the appendix at 11a-12a; the order, at 9a-10a; and the opinion at 13a-36a. The opinion is not yet reported. The Court of Appeals entered an order on January 15, 1979, dismissing appeals taken by Dr. Key from the orders of the District Court of March 17, 1978, and August 17, 1978, without opinion, referring to its opinion of January 11, 1979. The order is printed in the appendix at 8a.

The Court of Appeals entered an order on February 8, 1979, amending its opinion of January 11, 1979. A copy of the order is printed in the appendix at 6a-7a.

The District Court entered an order on February 27, 1979, affirming the order of the bankruptcy judge, entered December 12, 1978, without opinion. The order is printed in the appendix at 4a-5a.

The Court of Appeals entered an order on February 28, 1979, denying a petition for rehearing, without opinion. The order is printed in the appendix at 3a-4a. The Court of Appeals entered an order on March 1, 1979, amending its opinion of January 11, 1979. The order is printed in the appendix at 1a-2a.

Jurisdiction

The Court of Appeals entered judgment, affirming orders of the District Court on January 11, 1979. On the same date, the Court of Appeals dismissed appeals from other orders. Petitioners filed a timely petition for rehearing on January 25, 1979, which was denied by order of February 28, 1979 (3a-4a).

The jurisdiction of this court is invoked under Title 28 U.S.C. § 1254(1), granting jurisdiction to this court to review cases in the courts of appeals by writ of certiorari before or after rendition of judgment.

Constitutional and Statutory Provisions Involved

This case involves Amendment V of the Constitution of the United States; Section 77 of the Bankruptcy Act, 11 U.S.C. § 205; Chapter X of the Bankruptcy Act, 11 U.S.C. § 501 *et seq.*; Chapter XI of the Bankruptcy Act, 11 U.S.C. § 701 *et seq.*; and the Pennsylvania Business Corporation Law, 15 P.S. §§ 1311(B), 1320(1) and 2102. The texts of relevant parts of these constitutional and statutory provisions are printed at the end of this petition.

Statement of Questions Presented for Review

1. May a District Court, by a series of actions in interdependent bankruptcy proceedings involving a railroad, adopt plans of reorganization and arrangement that reduce the equity interests of the 150,000 stockholders of the holding company without providing either for individual, mailed notice to the stockholders of their right to be heard and to contest such plans in court or for a stockholders meeting to consider such plans and to empower representatives to carry out the will of the stockholders in court?

2. Do stockholders of a holding company have a right to be heard and to appeal orders adopting a plan of reorganization of a railroad?

3. May a District Court reorganize the interests of creditors and stockholders of a railroad and its holding company without making a finding as to the value of their estates?

4. Were the 150,000 stockholders of Penn Central Company entitled to only four percent of the common stock of Penn Central Corporation, the corporation that emerged from the bankruptcy proceedings, where the new corporation has a multibillion dollar claim against the United States and other valuable assets?

5. Should directors nominated by creditors be given power to settle a claim which, if litigated, could result in great benefit to stockholders?

6. Do the plans of reorganization and arrangement of the railroad and its holding company, together with the provisions of the Regional Rail Reorganization Act of 1973, constitute an overall unconstitutional taking of the property of the stockholders of the holding company by the United States?

Statement of the Case

1. Nature of the Proceedings.

These are two proceedings in bankruptcy. One is a proceeding for the reorganization of a railroad and the other is a Chapter XI proceeding for arrangement of the railroad's holding company. Petitioners are eight stockholders of the holding company.*

* A ninth stockholder, Dr. Robin S. Key, is filing a separate petition, incorporating this petition by reference.

Petitioners complain that, although they owned the equity interest in an immensely valuable railroad before bankruptcy, the courts below have arbitrarily allocated them only a four percent interest in the reorganized corporation and have done so without providing stockholders an opportunity to learn of the proceedings, to be heard, to vote on the plans, or to appeal from orders approving and confirming the plan of reorganization of the railroad and providing that it be consummated.

Jurisdiction of the District Court was invoked under Section 77 and Chapter XI of the Bankruptcy Act.

2. Statement of Facts and Prior Proceedings

Approximately 150,000 stockholders own approximately 24 million shares of the holding company. By a series of steps in two interdependent bankruptcy proceedings, these stockholders have had their interests reduced to only four percent of the equity of the emerging public company, Penn Central Corporation. They are being required to turn in 25 shares for one new share. Creditors of the holding company are receiving six percent of the equity, and creditors of the railroad, ninety percent.

The lower courts held that the stockholders had no right to participate in the proceedings resulting in this alteration of their interests and the stockholders have never received individual, written notice of an opportunity to be heard and contest such alteration.

As of December 31, 1969, the total assets of the holding company were $6.851 billion and the net worth was $2.810 billion, or, a book value per share of approximately $117. In 1969, PCTC operated the Penn Central Railroad and held large amounts of real estate.

On June 21, 1970, PCTC filed for reorganization under Section 77 of the Bankruptcy Act, providing for the rehabilitation of railroad debtors. 11 U.S.C. § 205. On February 10, 1971, the railroad trustees reported to the District Court that PCTC was not viable under existing regulatory constraints. On March 6, 1973, the District Court filed a memorandum concluding that it was highly doubtful that the railroad could properly be permitted to continue to operate. *In Re Penn Central Transportation Company,* 355 F.Supp. 1343, 1345-6 (E.D.Pa. 1973). In July, 1973, the trustees submitted a plan of reorganization, which contemplated termination of all rail operations and liquidation of all rail properties unless arrangements were made with public authorities to assume interim losses.

On January 2, 1974, the Regional Rail Reorganization Act of 1973 ("RRRA") became law. 45 U.S.C. § 701 *et seq.* RRRA provided that the railroad operate under the aegis of the lower court for a further period, approximately 20 months, during which time the United States Railway Association ("USRA"), a new corporate entity created under the act, would complete the task of planning a new rail system or systems, and deciding what portions of the bankrupt's rail facilities should be conveyed to Consolidated Rail Corporation ("ConRail"), the company which was to take over the system which USRA designed. ConRail was to pay PCTC in securities.

In 1974, a constitutional challenge to RRRA resulted in a decision by this court, that RRRA, as supplemented by the Tucker Act, 28 U.S.C. § 1491, was constitutional. *Regional Rail Reorganization Act Cases,* 419 U.S. 102 (1974). The Tucker Act provides for money damages against the United States.

On April 1, 1976, PCTC's railroad properties were conveyed to ConRail.

As the consequence of all of this, the PCTC estate consisted of real estate and other investments not acquired by ConRail, plus PCTC's claims under RRRA and the Tucker Act, against ConRail and the United States.

The assets remaining on hand were valued by the lower court at almost $1.85 billion, not including the value of the claim against ConRail and the United States. The claims are currently in litigation in a special court established by RRRA for the express purpose of handling these claims. This litigation is called "the Valuation Case." The principal amount of all claims against the estate, before reorganization, totaled more than $3 billion, with interest, as of 1978.

The District Court did not place a value on the Valuation Case. To the contrary, the District Court said that it did not wish to take evidence on this point. The Securities and Exchange Commission ("SEC") staff evaluated the proceeds of the Valuation Case as possibly ranging between $500 million and $11 billion as of 1976. The proceeds are subject to eight percent annual interest. Mr. Justice Douglas described the value as "unknown billions—perhaps 10 or 12 billion" in *Regional Rail Reorganization Act Cases, supra,* 419 U.S. at 180.

On September 20, 1977, the SEC staff reported to the District Court:

> "The expectation of a large recovery from the Valuation Case is not a matter of contingency or unfounded hope. It is as certain as any future event can be."

The Valuation Case involves two separate issues: (1) the "conveyance taking issue" relating to just compensation for the properties conveyed by PCTC to ConRail on April 1, 1976, and (2) the "erosion taking issue" relating to losses

sustained when PCTC operated a railroad involuntarily. The book value of the property conveyed to ConRail by PCTC was about $3.2 billion. PCTC experienced net railway operating losses from 1970 through 1976 before fixed charges, of $900 million, plus another $400 million of extraordinary loss items, mostly rail related.

The Valuation Case is expected to take until 1987 for completion. This court has appellate jurisdiction to review decisions of the special court. Taking the high valuation, the recovery from the case could be over $20 billion, with interest. Under the plan of reorganization, almost all of this would go to the former creditors of PCTC in exchange for slightly over $3 billion in claims. This would be a great windfall to creditors and a corresponding shortfall to stockholders.

Other assets of PCTC received cursory consideration in the lower courts, leading to the unreasonably low equity assigned to stockholders. For example, the SEC concluded that coal reserves in the amount of 1.2 billion tons would be worth only $111 million as of the end of 1982. The District adopted the SEC report in this respect. There was little justification for this remarkably low value (less than 10 cents per ton). Petitioners could have provided expert testimony that coal reserves are now worth from 25 cents to $5 per ton.

The District Court ignored the possibility that the stock of ConRail, to which PCTC was entitled under RRRA, may have great value in the future. This was to be the primary form of compensation to PCTC for conveyance of rail assets on April 1, 1976, and is exclusive of opportunities to obtain other securities and cash in the Valuation Case.

The District Court made no effort to independently value the securities even though ConRail operates the principal rail

network in the Northeastern United States. The District Court said that it assumed that the ConRail securities "will be valueless." This is contrary to the expressed intent of Congress in enabling legislation that ConRail be financially self-sustaining (45 U.S.C. § 716) and that it be able to attract additional private investment (45 U.S.C. § 701).

The District Court also overlooked the value of the combined tax loss carry forward of the companies, amounting to over $1 billion.

The District Court approved the appointment of nominees of creditors to the initial board of directors of the reorganized company (one director is the lawyer who represented the creditors of the holding company in the Chapter XI proceedings). The stockholders received no representative on the board. This board was also given the power to settle the Valuation Case.

The stockholders of the holding company were excluded from participation in formulating the plans by a series of legal maneuvers.

In 1969, when bankruptcy was foreseeable to management of the railroad, the board of directors distributed proxy material to the stockholders of the railroad, which was then directly owned by public investors. The directors proposed that stockholders exchange their stock, one for one, for the common stock of a holding company. The stated reasons for the reorganization were that management had embarked on a program of diversification. Management had several possible acquisition prospects in mind. Management believed that the stock of a holding company would provide greater flexibility in this program. The investing public identified the securities of the railroad with railroad transportation. The issuance of securities by a railroad required prior approval of the In-

terstate Commerce Commission. Restrictions applicable to the issuance of securities by a railroad would make it difficult for the company to carry out a diversification program. A holding company pattern would expedite and facilitate the merger of various railroad subsidiaries.

The truth of the matter was that diversification was impossible because the railroad was moving into debt amid mounting operating losses. The significance of the holding company was to cloud the standing of the stockholders in the forthcoming railroad bankruptcy proceedings, filed on June 21, 1970.

The District Court treated the holding company rather than its stockholders as the only party having an equity interest in the railroad. The holding company continued to operate without court protection until July 22, 1976, when it filed a petition for arrangement under Chapter XI of the Bankruptcy Act. However, it stopped holding stockholder meetings in 1974 because management deemed them too expensive. On August 16, 1976, a petition to continue as debtor in possession was granted (217a-221a).

The seven directors of the holding company, six of whom were elected at the last stockholders meeting in 1974, and one of whom was appointed on May 21, 1975, by the other six, acted during the critical final years of the railroad's reorganization as if they were the ultimate equity owners. The Chapter XI bankruptcy court accorded counsel selected by the directors full authority to bind the holding company. At a hearing on May 28, 1977, the bankruptcy court directed the holding company to file a consent to the plan of reorganization of PCTC. Counsel for the holding company asked the court to enter the order. The District Court having jurisdiction over the railroad reorganization relied heavily on the support of the holding company in approving the railroad plan of reorganization (213a).

On April 21, 1978, counsel selected by the 1974 directors applied to the bankruptcy court for an order authorizing the holding company to vote in favor of the railroad plan of reorganization. The bankruptcy court entered an order granting the petition the same day (133a). At no time did the stockholders of the holding company receive notice of the proceedings under Chapter XI. They were given no opportunity to be heard on the questions whether the holding company should declare its support of the railroad plan of reorganization, in 1977, or whether the holding company should vote for the plan of reorganization, as finally approved, in the spring of 1978. The holding company failed to hold stockholder meetings after 1974 and never held a meeting for the purpose of considering the PCTC plan of reorganization.

Petitioners here and Dr. Key, who is filing a related petition, collectively hold about 240,000 shares of the holding company stock. Dr. Key and Mr. Sukala hold about 100,000 shares each. They learned about the plan to reorganize the railroad through newspaper accounts at times ranging from when the plan was first filed with the court in 1977, in the case of Mr. Schafer, to several months after the plan was approved, in the case of Dr. Key. Petitioners here first engaged counsel in April, 1978, after the District Court approved the plan and when they first recognized that their equity interests had been disastrously reduced. (Dr. Key first hired counsel on July 19, 1978.) Petitioners filed a timely appeal from the approval of the plan as well as from its confirmation and an order providing for consummation.

After petitioners' counsel reviewed what had already taken place in the two proceedings, he appeared at the hearing of July 27, 1978, to oppose confirmation. On the same date, petitioners filed an adversary proceeding before the Bank-

ruptcy judge in the Chapter XI court to set aside declarations of support for the plan by the holding company, the vote in favor of the plan by the holding company as sole stockholder, and to require a meeting of holding company stockholders. Petitioners raised the *ultra vires* character of what the holding company was purporting to do as a collateral attack in the railroad proceeding.

The district judge in the railroad proceeding took the position that stockholders of the holding company had no standing to oppose confirmation (116a). In the Chapter XI proceeding, the bankruptcy judge took the position that stockholders lacked standing because Chapter XI is designed only to modify or alter the rights of unsecured creditors and no provision of the act permits a plan, proposed under Chapter XI, to deal with the rights of stockholders (39a).

The district judge overseeing the railroad reorganization reviewed a decision of the special court (*In re Valuation Proceedings, etc.*, 445 F.Supp. 994, 1031 (Special Court 1977)), and concluded that valuation theories which would generate an award approaching 11 billion 1976 dollars had been rejected (117a). The District Court failed to note that the special court also characterized as "incredible" an initial offer of only $506.5 million. 445 F.Supp. at 1029. The district judge found the railroad reorganization plan equitable to holding company stockholders in spite of petitioners' objections (121a).

The bankruptcy judge summarily dismissed petitioners' adversary complaint and objections to the holding company plan of arrangement, apparently on the basis that stockholders had no standing to participate (131a). His orders were summarily affirmed by the supervising district judge on October 10 and 12, 1978 (44a-45a). The reason for affirming

without opinion was probably the stated desire of the parties to proceed quickly to the Court of Appeals, where a hearing had been scheduled for October 16, 1978, on appeals from approval and confirmation of the railroad reorganization plan, scheduled to be consummated on October 24.

On October 17, 1978, the Court of Appeals denied petitioners' motion for a stay of consummation of the railroad plan of reorganization and the holding company plan of arrangement, pending appeal (42a-43a). On October 23, 1978, Mr. Justice Brennan denied a stay application to the same effect (41a), and on November 13, 1978, this court denied the same stay application referred to it by the Chief Justice (40a).

The plans were consummated on October 24, 1978, as scheduled. On January 11, 1979, the Court of Appeals handed down its decision, dismissing stockholder appeals from the railroad reorganization plan on the ground of lack of standing and affirming the actions of the bankruptcy judge in the Chapter XI proceeding. However, the Court of Appeals said:

> "Because of the importance of this matter and the potentially devastating consequences of unnecessary delay, however, we deem it advisable to discuss the merits of appellants' claims so as to reduce the likelihood of a remand to this court should the Supreme Court decide that we have erred in dismissing these appeals (22a)."

The Court of Appeals reviewed the uncertainty of the value of equity interests, praised the extraordinary job done by the railroad reorganization judge, conceded that granting a contingent interest in the Valuation Case to holding company shareholders could perhaps have been approved on appeal, but decided that a plan which gives holding company stockholders a small present interest is fair. The Court of Appeals agreed that stockholder participation was not required

under Chapter XI proceedings because, "an arrangement under Chapter XI may not deal with the rights of shareholders (34a-35a)." The Court of Appeals ignored that the Chapter XI court had, in fact, dealt with shareholder rights by both authorizing the holding company's agreement to the railroad plan of reorganization and by dividing the equity interest assigned thereunder to the holding company, 60:40, between the holding company's creditors and its stockholders.

REASONS WHY WRIT SHOULD BE ALLOWED

1. The Court of Appeals sanctioned conduct by the District Court which was contrary to due process of law, as interpreted by this court.

The Court of Appeals approved of the exclusion of approximately 150,000 Penn Central stockholders from participation in proceedings which drastically altered and reduced the value of their property interests. The Court of Appeals itself held that stockholders lacked standing to appeal critical orders affecting their interests. In *Mullane, Special Guardian v. Central Hanover Bank and Trust Company,* 339 U.S. 306 (1950), this court held that courts may not decide important questions affecting property interests without individual, mailed notice to affected parties of their right to be heard and contest such judicial action. The Court of Appeals overlooked the fundamental unconstitutionality of such exclusion by taking a step by step approach in its analysis. The court said:

> "If, however, both the reorganization plan and the arrangement meet the requirements of Section 77 and Chapter XI respectively, no such constitutional violation (of the right to due process) would exist (30a-31a)."

To the contrary, fidelity to the literal provisions of the Bankruptcy Act does not guarantee constitutional sufficiency. "Due process" requires that petitioners be given an opportunity and notice to be heard at every meaningful state in consideration of the approval of the plans of reorganization and arrangement.

The Court of Appeals relied on a provision of the Pennsylvania Business Corporation Law, 15 P.S. § 1320(1), in holding that the bankruptcy judge could authorize the holding company to support and vote in favor of the railroad reorganization plan and confirm the holding company plan. The statute provides that approval by stockholders may be omitted if corporate action in question is authorized by a bankruptcy judge. This Pennsylvania statute does not and constitutionally cannot give federal bankruptcy courts the power to act without *Mullane* notice to stockholders before approving corporate action, which ordinarily would require a favorable vote of the stockholders and which disastrously alters their property interests.

2. This court should take final responsibility in a matter involving the property rights of approximately 150,000 citizens where there is at least the appearance that the government is responsible for ruinous losses.

The railroad had a net worth of $2.810 billion when it went into reorganization. There was good ground to believe the net worth was understated because of the enormous market value of the railroad's real estate holdings, which many believed to have been conservatively stated. This net worth belonged to 150,000 public investors, many of them small stockholders who had invested a large portion of their life savings. The government took responsibility to see that the stockholders get their fair share in two senses. Under the Bankruptcy Act, the federal courts have taken the estate of the railroad for

purposes of reorganization and interim administration. Congress required interim operations at a loss and conveyance of the properties deemed necessary to continue the operation of a railroad, to ConRail.

The stockholders are getting only nominal value at the end of the reorganization. They feel that they have been dealt with unfairly. Even if the stockholders were entitled to only four percent of the reorganized corporation, this court should give the stockholders a hearing so that, by its prestige, it may help put to rest suspicion that the government has cheated the stockholders. This is particularly true because of the holdings of the lower courts that stockholders were to be excluded, while according full standing to governmental parties, banks, insurance companies and other large institutions.

3. This court should remedy a great injustice to railroad stockholders.

In *Regional Rail Reorganization Act Cases, supra,* this court enforced the provisions of the Fifth Amendment requiring that the government provide just compensation for property taken, by authorizing a Tucker Act remedy for money damages against the United States. The lower courts, in approving the plans of reorganization and arrangement, have diverted this remedy from the stockholders to former creditors of the railroad and its holding company. The provisions of RRRA requiring conveyance of railroad properties to ConRail and requiring the railroad to operate while losing money made it impossible for the railroad holding company to raise enough money to pay its creditors by 1978.

The railroad as of 1978 had $1.85 billion in assets able to be turned to cash, (allowing reasonable time to liquidate some assets). Its liabilities were about $3 billion. The rail-related losses during bankruptcy alone were about equal to the shortfall. In other words, if the railroad had not operated during bankruptcy, it would have had enough cash to pay its creditors and the claim against the United States for conveyance of the railroad to ConRail would belong exclusively to the stockholders.

The combined effects of RRRA and the actions of the bankruptcy court are to place all of the burdens of the time and uncertainty of establishing the liability of the government to the railroad upon the stockholders. Although the District Court recognized the existence of the Valuation Case, it gave it very little weight in allocating shares of the reorganized company because the amount of the ultimate proceeds are unknown.

By mandating conveyance of the railroad assets as of 1976, the United States prevented the railroad from selling its property to raise cash to pay its debts. Since RRRA has deferred compensation to the railroad until valuation can be completed in 1987, the lower courts should have provided that stockholders, by a special class of securities, receive the proceeds of the Valuation Case in excess of what is needed to fully pay the claims of creditors.

The District Court put the creditors in control of the settlement of the Valuation Case, risking the possibility that there will be no proceeds in excess of creditors' claims. Creditors are primarily interested in return of their principal with interest. Even though they also have collectively 96 percent of the equity interest in the reorganized company, they are likely to prefer a quick settlement with the United States to full and fair compensation through litigation.

Conclusion

For the foregoing reasons, a writ of certiorari should issue to review the judgment and order of the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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TEXT OF CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT V

THE CONSTITUTION OF THE UNITED STATES

"No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Relevant Provisions
of
SECTION 77, BANKRUPTCY ACT

Reproduced in the appendix at 20a-21a.

SECTION 356, CHAPTER XI, BANKRUPTCY ACT

"An arrangement within the meaning of this chapter shall include provisions modifying or altering the rights of unsecured creditors generally or of some class of them, upon any terms or for any consideration."

SECTIONS OF THE PENNSYLVANIA BUSINESS CORPORATION LAW,
15 P.S. §§ 1311 AND 2102
(§ 1320(1) is reproduced in
the appendix at 33a).

§ 1311. Voluntary transfer of corporate assets

* * *

B. A sale, lease, or exchange of all, or substantially all, the property and assets, with or without the good will of a corporation, whether to a subsidiary corporation or not, if made neither (1) in the usual and regular course of its business, nor (2) for the purpose of relocating the business of

the corporation, nor (3) in connection with its dissolution or liquidation, may be made upon such terms and conditions and for such considerations which may consist, in whole or in part, of money or property, real or personal, including shares, or bonds, or other evidences of indebtedness of any other corporation, domestic or foreign, as may be authorized in the manner hereinafter provided in this subsection. The board of directors shall adopt a resolution recommending such sale, lease or exchange, and directing the submission thereof, to a vote of the shareholders entitled to vote in respect thereof at a meeting which may be either an annual meeting of the shareholders or a special meeting of the shareholders entitled to vote in respect of such sale, lease, or exchange. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, or exchange of all, or substantially all, the property and assets of the corporation, shall be given to each shareholder of record, whether or not entitled to vote, at least ten days prior to the date of the meeting, in the manner provided by this act for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, such purpose may be included in the notice of the annual meeting. * * * At such meeting, the shareholders may authorize such sale, lease, or exchange, and fix or may authorize the board of directors to fix, any or all of the terms and conditions thereof, and the consideration to be received by the corporation therefor. Such authorization shall receive the affirmative vote of the shareholders entitled to cast at least a majority of the votes which all shareholders are entitled to cast on the question, and if any class of shares is entitled to vote as a class on the question, the affirmative vote of the holders of at least a majority of the outstanding shares of each class of shares entitled to vote as a class.

* * *

§ 2102. Election of corporation to dissolve voluntarily

Any business corporation which has commenced business and which has issued shares may elect to dissolve voluntarily, and wind up its affairs, by a written agreement signed by all the shareholders of record of the corporation consenting to its dissolution, or after the board of directors shall have adopted a resolution recommending that the corporation be dissolved voluntarily, and directing that the question of dissolution be submitted to a vote of the shareholders at a meeting which may be either an annual meeting of the shareholders, or a special meeting of the shareholders entitled to vote on the question. Written notice, stating that the purpose, or one of the purposes, of such meeting is to discuss the advisability of voluntarily dissolving the corporation, shall be given to each shareholder of record, whether or not entitled to vote, within the time and in the manner provided in this act for the giving of notice of meetings of shareholders. If such meeting be an annual meeting, such purpose may be included in the notice of the annual meeting. The resolution shall be declared adopted upon receiving the affirmative vote of the shareholders entitled to cast at least a majority of the votes which all shareholders are entitled to cast on the resolution, and if any class of shares is entitled to vote on the resolution as a class, the affirmative vote of the holders of at least a majority of the outstanding shares of each class of shares entitled to vote on the resolution as a class.

Supreme Court, U. S.
FILED
MAY 29 1979
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

October Term, 1978

Nos. 78-1775
78-1776

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA and CHARLES W. HANNON, Stockholders of Penn Central Company,
Petitioners,

v.

PENN CENTRAL CORPORATION, formerly PENN CENTRAL TRANSPORTATION COMPANY, PENN CENTRAL COMPANY and THE UNITED STATES OF AMERICA,
Respondents.

DR. ROBIN S. KEY, Stockholder of Penn Central Company,
Petitioner,

v.

PENN CENTRAL CORPORATION, formerly PENN CENTRAL TRANSPORTATION COMPANY, PENN CENTRAL COMPANY and THE UNITED STATES OF AMERICA,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AT NOS. 78-1715, 78-2321, 78-2336, 78-2347, 78-2348 AND 79-1573.

APPENDIX TO PETITIONS FOR WRITS OF CERTIORARI

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IN THE

United States Court of Appeals

For the Third Circuit

Nos. 78-1715, 78-2321 and 78-2336

In the Matter of
PENN CENTRAL TRANSPORTATION COMPANY,
Debtor,

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA, CHARLES W. HANNON, and PHILIP MORTON,
Appellants in No. 78-1715
(Appeal from D.C. Order No. 3455)
Appellants in No. 78-2321
(Appeal from D.C. Orders Nos. 3707 and 3708).

In the Matter of
PENN CENTRAL TRANSPORTATION COMPANY,
Debtor,

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA, CHARLES W. HANNON, and PHILIP MORTON,
Appellants in No. 78-2336
(Appeal from D.C. Orders of 10/10/78 and 10/12/78).

On Appeal From the United States District Court
for the Eastern District of Pennsylvania

D.C. Nos. B-70-237 and B-76-1469 In Bankruptcy

Amending Order

Argued October 16 and 17, 1978

Before: ALDISERT, GIBBONS and HIGGINBOTHAM,
Circuit Judges.

ORDER

It is ORDERED that the slip opinion filed January 11, 1979, as amended on February 8, 1979, is hereby amended further as follows:

Page 20, line 7 from bottom—§ *150(B)*, should read § *1501(B)*

Page 24, footnote 9, line 5—In re *v. Loewer's Gambrinuus* Brewery Co., should read In re *V. Loewer's Gambrinus* Brewery Co.

Page 24, footnote 10, line 3 from bottom—350 U.S. *463*, should read 350 U.S. *462*

BY THE COURT,

A. LEON HIGGINBOTHAM,
Circuit Judge.

Dated: March 1, 1979.

Order Denying Rehearing

UNITED STATES COURT OF APPEALS
For the Third Circuit

Nos. 78-1715, 78-2321 & 78-2336; 78-2347/8

In the Matter of

PENN CENTRAL TRANSPORTATION COMPANY,
Debtor,

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA, CHARLES W. HANNON, and PHILIP MORTON,
Appellants in Nos. 78-1715, 78-2321 and 78-2336,

ROBIN S. KEY,
Appellant in Nos. 78-2347 and 78-2348.

SUR PETITION FOR REHEARING

Present: ALDISERT, GIBBONS and HIGGINBOTHAM,
*Circuit Judges.**

The petition for rehearing filed by Appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for

---

* Chief Judge Seitz and Judges Adams, Rosenn, Hunter, Weis and Garth did not participate in the consideration of this matter.

rehearing and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court *in banc*, the petition for rehearing is denied.

By the Court,

A. LEON HIGGINBOTHAM,
Circuit Judge.

Dated: February 28, 1979

Order Affirming Dismissal Order

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In the Matters of
PENN CENTRAL COMPANY and its wholly owned subsidiary PENN CENTRAL INTERNATIONAL N. V.,
Debtors-in-Possession,

DR. ROBIN S. KEY,
Plaintiff,

v.

PENN CENTRAL COMPANY, ARCHIBALD DeB. JOHNSON, FRANCIS J. TUCKER, HERBERT J. BUTLER, JAMES J. GLENN, RICHARD S. ROBINSON, JOSEPH SHARFSIN, and C. ROBIN TURNER,
Defendants.

Chapter XI Cases
Bankruptcy No. 76-1469 EG

ORDER

AND NOW, this 27th day of February, 1979, it is hereby ORDERED that the Order of Bankruptcy Judge Emil F. Goldhaber, entered December 12, 1978, granting the motion of Penn Central Company, *et al.*, to dismiss the complaint filed by Dr. Robin S. Key and denying the motion of Dr. Robin S. Key under Rule 11-15(b) of the Rules of Bankruptcy Procedure to have the above-captioned Chapter XI case proceed under Chapter X of the Bankruptcy Act be and they hereby are AFFIRMED.

JOSEPH S. LORD, III,
Ch. J.

Amending Order, February 8, 1979

UNITED STATES COURT OF APPEALS
For the Third Circuit

Nos. 78-1715, 78-2321 and 78-2336

In the Matter of
PENN CENTRAL TRANSPORTATION COMPANY,
Debtor.

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA, CHARLES W. HANNON, and PHILIP MORTON,

Appellants in No. 78-1715
(Appeal from D.C. Order No. 3455)
Appellants in No. 78-2321
(Appeal from D.C. Orders Nos. 3707 and 3708).

In the Matter of
PENN CENTRAL COMPANY,
Debtor.

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA, CHARLES W. HANNON, and PHILIP MORTON,

Appellants in No. 78-2336
(Appeal from D.C. Orders of 10 10 78
and 10 12 78).

On Appeal From the United States District Court
for the Eastern District of Pennsylvania

D.C. Nos. B-70-347 and B-76-1469 In Bankruptcy

Argued October 16 and 17, 1978

Before: ALDISERT, GIBBONS and HIGGINBOTHAM,
Circuit Judges.

ORDER

It is ORDERED that the slip opinion filed January 11, 1979 in the above is hereby amended as follows:

On page 11, 9th line of the first full paragraph, the words "the United States Railway Association" are deleted and replaced by the word "Conrail."

BY THE COURT,

A. LEON HIGGINBOTHAM, JR.,
Circuit Judge.

Dated: February 8, 1979

Dismissal Order, January 15, 1979

UNITED STATES COURT OF APPEALS
For the Third Circuit

Nos. 78-2347/48

In the Matter of
PENN CENTRAL TRANSPORTATION COMPANY,
Debtor,

ROBIN S. KEY,
Appellant, No. 78-2347
(Order No. 3707),

ROBIN S. KEY,
Appellant, No. 78-2348
(Order No. 3708).

(D. C. No. B-70-347 In Bankruptcy)

Present: ALDISERT, GIBBONS and HIGGINBOTHAM,
Circuit Judges.

ORDER

For the reasons stated in this Court's opinion in *In re Penn Central Transportation Co.*, Nos. 78-1715, 78-2321 and 78-2336 (3d Cir. January 11, 1979), the motion of Appellee Penn Central Corporation to dismiss these appeals is hereby GRANTED.

BY THE COURT:

(Sgd. A. LEON HIGGINBOTHAM),
Judge.

Dated: January 15, 1979

Dismissal Order, January 11, 1979

UNITED STATES COURT OF APPEALS
For the Third Circuit

Nos. 78-1715 and 78-2321

In the Matter of

PENN CENTRAL TRANSPORTATION COMPANY,
Debtor,

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA, CHARLES W. HANNON, and PHILIP MORTON,
Appellants.

D. C. No. B70-347 In Bankruptcy

Present: ALDISERT, GIBBONS and HIGGINBOTHAM,
Circuit Judges.

Dismissal Order, January 11, 1979.

ORDER

It is ORDERED that the above-entitled appeals be, and hereby are dismissed, in accordance with the opinion of this Court. Costs taxed against appellants.

ATTEST:

THOMAS F. QUINN,
Clerk.

Dated: January 11, 1979

Judgment, January 11, 1979

UNITED STATES COURT OF APPEALS
For the Third Circuit

No. 78-2336

In the Matter of

PENN CENTRAL COMPANY,

Debtor,

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA, CHARLES W. HANNON and PHILIP MORTON,

Appellants.

(D. C. No. B-76-1469 In Bankruptcy)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

Present: ALDISERT, GIBBONS and HIGGINBOTHAM,
Circuit Judges.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the orders of the said District Court filed October 10, 1978 and October 12, 1978, be, and the same are hereby affirmed. Costs taxed against appellants.

ATTEST:

THOMAS F. QUINN,
Clerk.

January 11, 1979

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 78-1715, 78-2321 and 78-2336

In the Matter of
PENN CENTRAL TRANSPORTATION COMPANY,
Debtor

Joseph A. Schafer, Whitney W. Irons, Alton P. Gainer, Emil Milan, Carol Kuchar, Leo Sukala, Stephen Sloboda, Charles W. Hannon, and Philip Morton,

Appellants in No. 78-1715
(Appeal from D.C. Order No. 3455)
Appellants in No. 78-2321
(Appeal from D.C. Orders Nos. 3707 and 3708)

In the Matter of
PENN CENTRAL COMPANY,
Debtor

Joseph A. Schafer, Whitney W. Irons, Alton P. Gainer, Emil Milan, Carol Kuchar, Leo Sukala, Stephen Sloboda, Charles W. Hannon, and Philip Morton,

Appellants in No. 78-2336
(Appeal from D.C. Orders of 10/10/78 and 10/12/78).

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

D.C. Nos. B-70-347 and B-76-1469 In Bankruptcy

Argued October 16 and 17, 1978

Before: ALDISERT, GIBBONS and HIGGINBOTHAM,
Circuit Judges.

(Opinion filed January 11, 1979)

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OPINION OF THE COURT

A. LEON HIGGINBOTHAM, JR., *Circuit Judge.*

There are 150,000 shareholders in the Penn Central Company of which only nine have appealed from certain orders concerning two bankruptcy proceedings: the reorganization of the Penn Central Transportation Company pursuant to section 77 of the Bankruptcy Act, 11 U.S.C.

§ 205 and the arrangement of the Penn Central Company pursuant to Chapter XI, 11 U.S.C. § 701 *et seq.* For the reasons given below we will dismiss certain appeals because of the appellants' lack of standing and will affirm those orders from which valid appeals were taken. Other challenges to the Penn Central Transportation Company's Plan of Reorganization are dealt with in Judge Aldisert's opinion in *In re Penn Central Transportation Co.*, Nos. 78-1698/1700, 78-1702/03, 78-1710, 78-2311/12, 78-2314/15 and 78-2319/20 (3d Cir. January 11, 1979) and in Judge Gibbons' opinion in *In re Penn Central Transportation Co.*, Nos. 78-1698, 78-1692/94, 78-1716, 78-2314 and 78-2316/18 (3d Cir. January 11, 1979).

Until 1969, the Penn Central Railroad was operated by a company named the Penn Central Company. In that year the stockholders approved a reorganization of the Penn Central Company through which the common stock of the Penn Central Company was exchanged, on a one-for-one basis, for the common stock of a holding company. The old Penn Central Company, now a wholly owned subsidiary of the holding company, changed its name to the Penn Central Transportation Company and the holding company took the name Penn Central Company. The reorganization was accomplished to facilitate consolidation of the railroad business as well as diversification into non-railroad enterprises.

The Penn Central Company (PCC) and a wholly owned subsidiary, Penn Central International N.V. are debtors-in-possession in a proceeding pursuant to Chapter XI of the Bankruptcy Act. That proceeding is under the supervision of Chief Judge Joseph S. Lord, III of the United States District Court for the Eastern District of Pennsylvania. The Penn Central Transportation Company (PCTC) is undergoing reorganization pursuant to section 77 of the Bankruptcy Act, 11 U.S.C. § 205. The crucial interdependence of the PCC's Chapter XI arrangement proceedings and the PCTC's section 77 reorganization proceedings will become apparent in the course of this opinion.

Order No. 1 of the PCTC reorganization under section 77 was filed on June 21, 1970. The Trustees of the PCTC first submitted their plan of reorganization in July of 1973. On March 9, 1978, after extensive hearings and numerous compromises, the reorganization court approved the amended plan of reorganization proposed by the PCTC's Trustees. *See In re Penn Central Transportation Co.*, 458 F. Supp. 1234 (E.D. Pa. 1978) [hereinafter referred to as Approval Opinion]. On August 17, 1978, following approval of the plan by creditors and stockholders pursuant to section 77(c), the reorganization court entered an order confirming the plan and also ordered that the plan be consummated on October 24, 1978. *See In re Penn Central Transportation Co.*, 458 F. Supp. 1364 (E.D. Pa. 1978) [hereinafter referred to as Confirmation and Consummation Opinion].

On July 22, 1976, PCC filed its petition for arrangement under Chapter XI. Its petition to remain in possession and continue operations was granted on August 16, 1976. On August 10, 1976, it received the permission to employ counsel. On March 16, 1978, the PCC filed its plan of arrangement in the Chapter XI proceedings. On April 21, 1978, the Chapter XI Court granted PCC permission to vote in favor of the PCTC Plan of Reorganization that the Reorganization court had approved. On July 27, 1978, the appellants filed a complaint before the Chapter XI Court seeking to set aside PCC's vote in favor of the plan and to enjoin the PCC from taking any steps to consummate either the PCTC plan of reorganization or the PCC plan of arrangement without the consent of PCC's shareholders. Appellants also sought an order requiring the holding of a meeting of PCC shareholders. The Chapter XI Court granted summary judgment against the appellants on August 16, 1978. On August 21, 1978, the Chapter XI Court confirmed PCC's plan of arrangement. Appellants appealed the orders confirming the PCC arrangement and granting summary judgment against them to the district

court supervising the Chapter XI proceedings. The district court affirmed the granting of summary judgment on October 10, 1978 and the confirming of the plan of arrangement on October 12, 1978.

Appellants are nine shareholders of the Penn Central Company. They are appealing from the orders of the Chapter XI Court approving the plan of arrangement and granting summary judgment against them on their complaint filed in that court. They are also appealing from the reorganization court's orders that approved the plan of reorganization, confirmed the plan and ordered consummation of the plan. A motion to stay consummation of the PCTC plan was denied by this court on October 17, 1978. We will discuss first the appeals from the reorganization court's orders and then the appeals from the orders of the Chapter XI Court.

Appeals From the Orders of the Reorganization Court

The Trustees of the PCTC have moved to dismiss the appeals from the reorganization court's orders by the nine PCC shareholders here on the ground that they lack standing in that they are not shareholders or creditors of the PCTC. We agree with the Trustees that appellants have no standing to press these appeals.

As this court has stated in an earlier appeal in this reorganization proceeding, "the standing of a participant to a railroad reorganization to appeal from an order of the reorganization court turns on whether section 77(c) (13) of the Bankruptcy Act, 11 U.S.C. § 205(c)(13) (1964), grants him a right to be heard." *In re Penn Central Transportation Co.*, 455 F.2d 811, 815 (3d Cir.), *cert. denied*, 407 U.S. 915 (1972), (footnote omitted).

Section 77(c)(13) provides in relevant part:

> The debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either or the Trustees of any mortgage, deed of trust or inden-

ture pursuant to which securities of the debtor are outstanding, shall have the right to be heard on all questions arising in the proceedings, and, upon petition therefor and cause shown, any such person or any other interested party may be permitted to intervene. The judge may, after hearing, make reasonable rules defining the matters upon which notice shall be given to other than interveners and the manner of giving such notice.[1]

Appellants have not sought to intervene below. The reorganization court has previously denied intervention to other PCC shareholders and we have upheld that denial. *See In re Penn Central Transportation Co.*, 328 F. Supp. 1273 (E.D. Pa. 1971), *aff'd per curiam*, 455 F.2d 976 (3d Cir.), *cert. denied*, 407 U.S. 915 (1972). Failure to seek intervenor status would not, however, be fatal to this appeal if appellants had a right to be heard in the proceedings below. *In re Penn Central Transportation Co.*, 455 F.2d 811, 815 n.11 (3d Cir.), *cert. denied*, 407 U.S. 915 (1972). Appellants, however, did not have the right to be heard below.

1. Bankruptcy Rule 8-210 is of similar import. That Rule provides:

Rule 8-210. Standing to be Heard: Intervention

(a) *Standing to be Heard.*

(1) The debtor, the indenture Trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a Chapter 8 case.

(2) A labor union or employees' association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees.

(b) *Intervention of Right for Governmental Bodies.* The Department of Transportation and the Interstate Commerce Commission may, or if requested by the court shall, intervene in a Chapter 8 case. One representative of any state in which the debtor operates its rail line may intervene in a Chapter 8 case. Any person intervening under this subdivision shall be deemed a party interest with the right to be heard on all matters in the case.

(c) *Permissive Intervention.* The court may for cause shown permit any interested person to intervene generally or with respect to any specified matter in the Chapter 8 case.

(d) *Service on Intervenors.* The court may enter orders governing the service of notice and papers on intervenors.

Appellants are stockholders of the PCC, not the debtor PCTC.[2] This court faced a similar issue when bondholders of a creditor of the PCTC sought to appeal a reorganization court order authorizing the sale and lease of certain of the PCTC's property. The court held that the bondholders lacked standing to appeal stating, "The relevant language of the Bankruptcy Act indicates . . . that Congress did not intend that those with simply a derivative interest in a railroad reorganization proceeding have a right to be heard and to appeal. *See Callaway v. Benton*, 336 U.S. 132, 139, 69 S. Ct. 435, 93 L. Ed. 553 (1949); *Boston & Providence Railroad Group v. Smith*, 333 F.2d 651 (2d Cir. 1964)." *In re Penn Central Transportation Company*, 455 F.2d 811, 816 (3d Cir.), *cert. denied*, 407 U.S. 915 (1972). Appellants, as shareholders of a shareholder of PCTC, are in no better position than the appellants in the above case who were creditors of a creditor of PCTC. Appellants raise, however, several arguments in an attempt to avoid the force of this logic and authority.

Appellants argue that the bondholders in the prior appeal were held not to have standing partially because their interests were adequately represented by the Trustee for the company whose bonds they held. Appellants assert that there is no adequate representative of their interest since the directors of PCC have already consented to the plan without consulting with the shareholders and without holding a shareholder meeting since 1974. We will discuss the matter of shareholder participation more fully with respect to the appeals from the Chapter XI Court. We need only state here that we see no basis on which to conclude that PCC's directors have not adequately represented the interests of PCC shareholders. Certainly,

2. In its previous opinion denying intervention to PCC stockholders, the reorganization court did not base its decision on this distinction. Instead, the court stated that it had the discretion, in appropriate instances, to deny intervention even to shareholders of the debtor. *See In re Penn Central Transportation Co.*, 328 F. Supp. 1273, 1275 (E.D. Pa. 1971), *aff'd, per curiam*, 455 F.2d 976 (3d Cir. 1972).

the fact that PCC has voted in favor of the reorganization plan is no evidence of inadequate representation.

The appellants also argue that the bankruptcy and impending dissolution of PCC operates to make their claims less derivative and more direct. The impending dissolution of the PCC does not convert appellants' interest in the PCC into a direct interest in the PCTC. Indeed, appellants will never have a direct interest in the PCTC since as a result of the PCC arrangement and the PCTC reorganization, appellants will receive shares in the reorganized corporation. We do not, however, place blind reliance on these formalities. There may well be situations where technically derivative interests are so direct and where other parties are such inadequate representatives of these interests that the holders of such interests would be entitled to direct participation in reorganization proceedings, even if they had failed to previously seek intervention. We hold only that the appellants' interests here are not sufficiently direct and unrepresented that they can be considered shareholders of the PCTC within the meaning of § 77(c)(13).

Appellants next contend that even if they are not entitled to be heard pursuant to § 77(c)(13), § 77(e) of the Bankruptcy Act, 11 U.S.C. § 205(e), independently provides them with standing. More specifically, they rely on the first sentence of that subsection which provides:

> Upon the certification of a plan by the Commission to the court, the court shall give due notice to all parties in interest of the time within which parties may file with the court their objections to such plan, and such parties shall file, within such time as may be fixed in said notice, detailed and specific objections in writing to the plan and their claims for equitable treatment.

Appellants argue that the reference to "all parties in interest" was intended to allow participation for a broader range of interests than that allowed by § 77(c)(13). The rationale for such a distinction, appellants assert, is that,

although it would be impractical to allow all interested parties to participate in the proceedings that lead up to the proposal of a plan, it is more practical to allow all such parties to be heard, essentially on a one time basis, with respect to the fairness of the plan itself. Also, participation by all interested parties is most essential at this climactic stage of the reorganization proceedings. We believe, however, it is clear from the statute that no such two-tiered standing test was intended by Congress. Section 77(c)(13), by its terms, seems to define standing with respect to all proceedings. It is unreasonable to construe the bare reference to "all interested parties" in § 77(e) as establishing a different standard with respect to hearings on the plan itself without any other indication of an intention to establish an exception to § 77(c)(13). Moreover, the second sentence of § 77(e) indicates that no such exception was intended. That sentence reads:

> The judge shall, after notice in such manner as he may determine to the debtor, its Trustee or Trustees, stockholders, creditors, and the Commission, hear all parties in interest in support of, and in opposition to, such objections to the plan and such claims for equitable treatment.

Thus it appears that the reference to "all interested parties" is to those parties given a right to be heard under § 77(c)(13), namely stockholders, creditors and other interested parties allowed to intervene by the reorganization court in the exercise of its discretion. We conclude, therefore, that appellants cannot be heard under § 77(e) if they do not meet the requirements of § 77(c)(13). And they do not.

Appellants argue finally that the Trustees are estopped from contesting their standing because at least one of the appellants was included on the service list pursuant to the reorganization court's order number 3013 and has received copies of many of the papers filed by the parties in the

court of the reorganization proceeding. Appellants also note that their arguments have been referred to by the reorganization court in its opinions. These facts are insufficient to establish an estoppel against the Trustees. As this court stated in reply to the arguments of the bondholders' committee which also sought standing on the basis of an estoppel argument, "The fact that the New Haven Committee was allowed to participate in the Penn Central reorganization court proceedings does not give rise to an automatic right of appeal. *See Peckham v. Casalduc*, 261 F.2d 120, 121 (1st Cir. 1958), *cert. denied*, 359 U.S. 958, 79 S. Ct. 798, 3 L. Ed. 2d 766 (1959) (Chapter X Reorganization)." *In re Penn Central Transportation Co.*, 455 F.2d 811, 815 n.9 (3d Cir.), *cert. denied*, 407 U.S. 915 (1972).

Having rejected appellants' list of arguments in opposition to the motion to dismiss, we are left with the conclusion that appellants do not have standing to appeal orders of the reorganization court and, therefore, that the motion to dismiss must be granted. Because of the importance of this matter and the potentially devastating consequences of unnecessary delay, however, we deem it advisable to discuss the merits of appellants' claims so as to reduce the likelihood of a remand to this court should the Supreme Court decide that we have erred in dismissing these appeals. The merits of these appeals have been briefed and there was oral argument on these issues.

Because the overall plan of reorganization has been discussed and summarized quite fully in the opinions issued today by Judges Aldisert and Gibbons as well as in Judge Fullam's opinion approving the plan, we will not describe in detail the workings of the plan. We will sketch here only the barest outlines of the plan. Claims of the U.S. government, state and local tax claims, and other administration and priority claims are paid either fully in cash or by varying combinations of cash and notes. Secured creditors receive a mix of cash, bonds, preference stock and common stock in the reorganized company. Unsecured cerditors receive common stock and certificates of beneficial interest. In combination, secured and unsecured creditors receive 90% of the common stock in the reorganized company. The remaining 10% of the stock goes to the PCC, PCTC's sole shareholder. Appellants argue that this does not constitute fair and equitable consideration for the interest in PCTC which PCC is giving up. Appellants also argue that it is improper to implement any plan at this time.

For convenience of exposition, we will discuss the second argument first. The main factor which distinguishes this reorganization from all reorganizations that have preceded it is not its mere size or complexity though we are aware of no larger or more complex reorganization proceeding in our history. The main distinguishing factor is rather that Congress has mandated, by statute, the conveyance of all of PCTC's prime railroad operating assets to the United States Railway Association and has established a Special Court to determine the proper compensation for these conveyed assets. No such determination is expected before 1987. The Special Court proceeding is referred to as the Valuation Case. Appellants ask us to require the reorganization court to await the outcome of the Valuation Case before approving *any* plan. Such a result, far from being necessary, would be unconscionable. The following excerpt from Judge Fullam's opinion explains why this is so:

> Perhaps the most striking feature of the Plan proceedings has been that, notwithstanding the welter of objections, counterproposals, charges and countercharges, it appears that no one has consciously advocated abandoning the attempt to achieve a Plan of Reorganization at this time. And there is almost equally unanimous agreement on the proposition that retention of Pennco as the operating core of the reorganized company is essential. As an assessment of the economic realities of the situation, this business

judgment is undoubtedly sound, as noted in the SEC Report. In view of the ramifications, intended or unintended, of some of the arguments presented, however, the Court must initially consider whether present approval of a Plan of Reorganization, with its attendant compromises, unfairly prejudices senior creditors whose claims might otherwise be more promptly satisfied. Arguably, if that were the case, the Plan should not be approved, no matter how globally beneficial it might be.

At first blush, it would seem theoretically possible to simply liquidate all retained assets immediately, pay the proceeds to top-ranking claimants in descending order of priority, await the outcome of the Valuation Case, and then complete the liquidation process by distributing the proceeds as far down the priority ladder as they would reach. While this course of action would undoubtedly produce less total benefit for the creditors than would a Reorganization Plan, it would theoretically produce more immediate payment to the senior creditors whose claims are entitled to priority treatment.

Upon analysis, however, it becomes immediately apparent that in the absence of compromise, even that simplistic and draconian result could not be achieved any more speedily than a Plan of Reorganization which provides greater benefits for all. The reason lies in the nature and complexity of the legal issues which, in the absence of compromise, would have to be litigated.

In their evidentiary submission, the Trustees have spelled out in some detail the major sources of potential litigation. These include the disputes concerning the relative priority of governmental claims, state, local and federal; the validity of the Pennco pledge agreement; a host of issues concerning the coverages of various mortgages and the correct application of marshalling principles; and what is perhaps the most

significant but least understood problem, unraveling the intricate relationships between the Debtor and the Secondary Debtors. And even if these disputes could be finally resolved through litigation by the early 1980s, as the Trustees assume, there is another aspect of the matter which the Trustees appear to have somewhat underestimated. All of these disputes are interrelated. Generally speaking, the highest-priority claims must be finally resolved before distribution to lower classes could begin. For that reason, until the highest-priority claims are known, it is virtually impossible to determine correctly the treatment which lower classes of claims should receive. It is unlikely, therefore, that litigation of all of these major disputes could efficiently be pursued simultaneously. Stated otherwise, if the litigation proceeded simultaneously, it might well be necessary, upon completion of one round of litigation, to commence an entirely new round of litigation in order to determine how the results of the first round of litigation should be implemented (either in a Plan of Reorganization, or in the hypothetical liquidation distributions).

Until the validity and priority of the Government claims were finally determined through litigation, no distributions of any kind could be made. Until the issues surrounding the state and local tax claims were determined through litigation (Section II-F), distributions to bondholders would seem unlikely. Perhaps more importantly, until the amount of the recovery in the Valuation Case became known, it would be impossible intelligently to work through the problem of allocating unpaid administration claims among the various mortgages, rendering distribution impossible. And until the Secondary Debtor issues were resolved, those assets would not be available for Penn Central creditors.

Thus, achieving a Plan at this time would expedite, rather than delay, distributions to senior claimants as

well as junior claimants, and there is no valid reason for rejecting the obvious overall economic advantages reorganization would entail.

The final, and equally obvious, point to be made is that there simply can be no reasonably prompt Reorganization Plan which does not embody compromise solutions of these litigable issues. The true choice, then, is among prompt achievement of a beneficial Plan which provides some immediate distributions to creditors and greater distributions in the long run, or holding matters in abeyance until all litigation, including the Valuation Case litigation, is concluded, and then attempting to achieve a Plan, or pursuing the economically wasteful course of a liquidation in which distributions to creditors would be withheld for many years. The choice is obvious.

Approval Opinion, 458 F. Supp. at 1263. We are fully persuaded and convinced by these arguments and have no doubt that to wait close to ten years before formulating a reorganization plan would be to pursue a ruinous course. We wish to add two rather obvious comments with respect to the desirability, from the viewpoint of PCC's shareholders, of awaiting the Valuation Case recovery. First, delaying the plan can only add to the administration expenses that would have to be satisfied before equity interests can participate. Secondly, as will be discussed below, there is a substantial possibility that PCC shareholders would receive nothing at all if no plan were adopted before the Valuation Case was decided. There is some possibility that the PCC, like any other party to the plan, may do worse under the plan than it would have done if no plan were consummated before the Valuation Case was decided. There is also a substantial possibility that it will do better. We are satisfied, however, that it is in the interest of all that the plan be consummated now.

The question remains whether the plan here is "fair and equitable" to the PCC[3] within the meaning of section 77(e). *See* e.g., *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R.R.*, 318 U.S. 523 (1943). To be "fair and equitable" all parties must receive the "equitable equivalent" of their claims. In determining equitable equivalence, it is not necessary to assign specific dollar values to every claim given up and every new security received in exchange. *See Reconstruction Finance Corp. v. Denver & Rio Grande Western R.R.*, 328 U.S. 495, 517 (1946); *Group of Institutional Investors, supra*, 318 U.S. at 565-566; *Ecker v. Western Pacific R.R.*, 318 U.S. 448, 487 (1943). Whether a reorganization plan should be approved is a question committed largely to the discretion of the district court and appellate review of the exercise of this discretion is of limited scope. *See Group of Institutional Investors v. Chicago, Milwaukee, St. Paul and Pacific R.R., supra*, 318 U.S. at 563-64; *Ecker v. Western Pacific R.R., supra*, 318 U.S. at 487. Of course, our review of whether the relevant legal principles were properly applied is plenary. If applicable legal principles are properly applied, we will not reverse a lower court's approval unless we conclude that the district court's discretion has been abused.

As mentioned, the PCC receives ten percent of the shares of the reorganized company. PCC is entitled to participate at all only as a result of the finding of solvency by the district court which we affirm. *See Group of Institutional Investors, supra*, 318 U.S. at 541-542; *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106, 115-116 (1939). The district court stated in this regard, "[I]f the Valuation Case should produce a very small recovery, the assumption of solvency would be incorrect . . . Since the record does not permit a finding of insolvency, and indeed it seems more probable than not that the estate is solvent, I am satisfied

3. To whom the PCC distributes the shares it receives pursuant to the PCTC reorganization is not relevant here. That issue will be reached in the discussion of the appeals taken from the Chapter XI Court's orders.

that the Trustees' assumptions represent the proper course of action." Approval Opinion, 458 F. Supp. at 1255.

Thus it is apparent that there is considerable uncertainty as to whether the PCC is entitled to receive any compensation at all. The extent of this uncertainty is illustrated by the following facts. The reorganization court found that a Valuation Case recovery with a present value of approximately $887 million would be necessary to retire all securities senior to the common stock. Confirmation and Consummation Opinion, 458 F. Supp. at 1372. Both secured and unsecured creditors receive common stock as part of their compensation. The reorganization court recognized that the retirement of all securities senior to the common stock would not result in full compensation to the secured creditors. The common stock's value must be enhanced by the Valuation Case recovery in order to result in full compensation. Although the exact amount of the Valuation Case recovery necessary to accomplish this enhancement cannot be computed with any precision, it is clear that unless the Valuation Case yields a recovery substantially in excess of 900 million dollars, the unsecured creditors, much less the shareholders of PCTC would have no right to participate.[4]

What, then, is the likely recovery from the Valuation Case? Appellants have referred to a letter from a member of the Securities and Exchange Commission staff to one of the appellants mentioning that the Valuation Case could yield between 500 million and 11 billion dollars. Letter of February 1, 1978 from Wilnetta S. Marks to Charles W. Hannon, reproduced in Appellants' Brief, on Appeal No. 78-1715, at Appendix A, p. 4. The Special Court has characterized as "incredible" the United States Railway Association's initial offer of 506.5 million dollars. *In re Valuation Proceedings*, 445 F. Supp. 994, 1029 (Special Court 1977). Thus a recovery below that figure seems unlikely. It is also improbable, however, that the Valuation Case recovery will approach 11 billion dollars. The Special Court has already held that it would not accept the theories upon which such a recovery would have to be premised. That court stated, "[W]e do not intend to consider estimates of reproduction costs, variations on that theme such as 'assemblage value,' value of materials 'in place,' trended original costs, gross liquidation value or societal values." *In re Valuation Proceedings*, 445 F. Supp. 994, 1031 (Special Court 1977).

On the basis of these figures and upon a full consideration of the other relevant facts and issues, Judge Fullam found that "no greater participation [by PCC] than the plan provides can be justified on the present record." Approval Opinion, 458 F. Supp. at 1343. The PCC itself supports and voted for the plan. The SEC, after a thorough analysis, also concluded that the plan was fair and equitable and met the requirements of section 77. Staff Report of the Securities and Exchange Commission on Plans of Reorganization, Appendix, Vol. 1, Book 3, p. 1236.

The entire record of the reorganization proceedings demonstrates clearly that the reorganization court did a truly extraordinary job of performing its exceedingly difficult, complex and time-consuming duties. To be the judge presiding over the perplexing Penn Central Transportation Company reorganization required the patience of

4. There was testimony before the reorganization court that the shares of common stock would be worth only $6 each. Appendix, Volume II, p. 130. The SEC estimated that the going-concern value of the reorganized company would be $600 million. Appendix, Volume I, Book 3, p. 1194. Under the plan forty million shares will be issued. Appendix, Vol. I, Book I, p. 26. This would indicate a value of $15 per share. Secured creditors are given one share of stock for every $44.55 of claim. Approval Opinion, 458 F. Supp. at 1285, n.47. Thus it is obvious that the common stock must sharply appreciate before secured creditors are fully paid off. Appellants argue that the reorganized company was undervalued by the SEC and the reorganization court because of an undervaluation of certain coal holdings. Appellants point to no specific error in the SEC's valuation method or any evidence, either in the record or which they would like to introduce into the record, showing that a higher valuation is proper. The reorganization court specifically stated that the assertion that the coal assets were not properly valued "simply is not accurate." Approval Opinion, 458 F. Supp. at 1343. This is a factual finding and appellants have not shown it to be clearly erroneous. At any rate, unless the SEC valuation was very far off, any error in the valuation of coal assets would have little bearing on our analysis.

Job, the wisdom of Solomon and the perceptive insight of Roscoe Pound. Though Judge Fullam would deprecate such personal reference as hyperbole, nevertheless after having studied thousands of pages of briefs, records and Judge Fullam's many orders and decisions, it is evident that he has presided over this perplexing case as adroitly and as effectively as any judge could. In fact, there are probably very few, if any, who could have done as well. Both the public generally and the litigants throughout this case are indebted to him for such an extraordinarily effective judicial performance. The plan of reorganization under review today, is itself a monument to the outstanding stewardship of the reorganization court in this matter. We have no doubt that the Reorganization Court exercised sound judgment in concluding that the plan provides fair treatment and compensation to the PCC.

Appellants argue, however, that the PCC should receive a contingent interest in the Valuation Case so that it would receive all the benefit of an unexpectedly large Valuation Case recovery. The PCC, instead of this purely contingent interest, has received present equity in the reorganized company that will benefit from any large recovery from the Valuation Case. Once we conclude that the plan's compensation is fair, the existence of other fair alternatives is irrelevant. Thus, although a plan which gave the PCC a possibly larger but purely contingent interest in the Valuation Case could perhaps have been approved, this does not alter our conclusion that the plan here which gives the PCC a smaller present interest is fair and should be approved. *See Ecker v. Western Pacific R.R., supra* 318 U.S. at 475-76.

Appellants' last argument is that the combination of the PCTC plan of reorganization and the PCC plan of arrangement results in a deprivation of property unlawful under the Fifth Amendment. If, however, both the reorganization plan and the arrangement meet the requirements of section 77 and Chapter XI respectively, no such

constitutional violation would exist. The Chapter XI arrangement will be discussed in the next section of the opinion. We are satisfied, however, that the plan here fully meets all the requirements of section 77 and, in particular, the amount of common stock received by the PCC is fair and equitable. If we were called upon to decide the merits of this issue, we would so hold.

The Chapter XI Proceedings

As mentioned, the appellants are appealing from two orders issued in the Chapter XI proceedings. The first is an order granting summary judgment against appellants on a complaint filed before the bankruptcy court presiding over the Chapter XI proceedings. The second is an order confirming the PCC's plan of arrangement.

The appellants' complaint alleges that the PCTC plan of reorganization constituted an exchange of substantially all of PCC's property or a voluntary liquidation of PCC and that, therefore, shareholder approval was required under 15 P.S. Sections 1311(B) and 2102. The complaint also alleges that PCC's management has violated 15 P.S. Sections 1501(B) and 1318 requiring the holding of annual meetings of shareholders and the issuance of annual financial statements to shareholders. As relief, appellants asked the court to set aside PCC's vote in favor of the PCTC plan and set aside the court's order authorizing such vote. The appellants also asked the court to enjoin the PCC "from taking any additional step toward consummation of the PCTC plan of reorganization and defendant's [PCC's] plan of arrangement and dissolution, until the management of defendant obtains its stockholders' consent therefor," and to order the PCC to hold a meeting and send out financial statements.

Six of PCC's seven directors were elected in November, 1974 to serve "for a one year term or until their successors are fully elected and qualified." The seventh director was appointed by the other six in May, 1975.

They are collectively entrusted with the management of the company. *See* 15 P.S. § 401. Thus, in the absence of specific statutory or other authority to the contrary, the directors would have the power to vote for approval or disapproval of a plan of reorganization of a company in which PCC holds shares. The Bankruptcy Act certainly does not require a corporate owner of shares in a company undergoing reorganization to solicit the viewpoints of its shareholders before voting on a plan of reorganization. 15 P.S. § 1501(B) does require that a shareholder meeting be held once a year. That section, however, expressly provides the following: "Failure to hold the annual meeting at the designated time shall not work any forfeiture or dissolution of the corporation." Furthermore it is provided, "If the annual meeting shall not be called and held during such calendar year, any shareholder may call such meeting at any time thereafter." Thus it is apparent that the Pennsylvania legislature did not intend that the consequence of the failure to hold a meeting would be to deprive the management of a corporation of its authority to run the corporation. By § 150(B) appellants had the right to call a meeting themselves, but they did not do so. Likewise, there is no authority to indicate that the failure to distribute annual financial statements would deprive management of its power.[5]

Appellants' complaint also refers to 15 P.S. Sections 1311(B) and 2102 which require shareholder approval of

5. The PCC directors state that the meetings have not been held because there are inadequate funds and because they were dependent on PCTC for the financial information necessary for proxy statements and that sufficiently current information was not received. Obviously, this would also explain the failure to send out annual financial statements. *See* Affidavit of Archibald Deb Johnson and Alvin Friedman attached to PCC's motion for summary judgment. Appellants sought and were denied an adjournment of the hearing on confirmation of the plan of arrangement so that they could conduct discovery with respect to these issues. They now claim that the summary judgment should be reversed because of this denial. The inability to conduct such discovery, however, is not a basis for overturning the summary judgment order since the ability of PCC to hold a meeting or issue financial statements is not relevant, as discussed above, to the validity of PCC's vote in favor of the PCTC plan of reorganization. Since PCC is about to be dissolved pursuant to the plan of arrangement, there would be no need to order the holding of a shareholder meeting or the issuance of annual financial statements at the present time.

exchanges of substantially all of a defendant's property and of voluntary liquidation respectively. Although the complaint does not clearly state appellants' theory as to the applicability of these provisions to PCC's directors' actions here, the theory seems to be that the PCTC reorganization and the PCC arrangement are each part of the process by which the exchange of all PCC's property and the dissolution of PCC itself is accomplished and that, therefore, shareholder approval is needed for each part of the process. We certainly agree that the PCTC plan is interrelated with the PCC plan and that the approval of the PCTC plan is part of the process by which PCC's liquidation is accomplished as provided for in its plan of arrangement. Unfortunately, for appellants, this very interrelationship dooms their contentions.

15 P.S. Section 1320(1) provides:

> (1) *any business corporation having a plan of reorganization or an arrangement which*, pursuant to the provisions of the Act of Congress of July first, one thousand eight hundred and ninety eight, entitled "An act to establish a uniform system of bankruptcy throughout the United States," as amended and supplemented, or of any similar Act of Congress (said act and such acts being herein referred to as the National Bankruptcy Act), has *been or shall be confirmed by the decree or order of a court of competent jurisdiction, shall have full power and authority to put into effect and carry out the plan of arrangement and the decrees and orders of the court, or judge or referee relative thereto, and may take any proceeding and do any act provided in the plan or arrangement or directed by such decrees and orders, without further action by its directors or shareholders.* Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the Trustee or Trustees, or receiver or receivers, of such corporation appointed in the bankruptcy proceed-

> ings (or a majority thereof), or if none be appointed and acting, be designated officers of the corporation, or by a master or other representative appointed by the court or judge or referee, with like effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation.
>
> [emphasis supplied and footnote omitted]

The order of the court authorizing PCC's vote in favor of the PCTC plan of reorganization was clearly relative to PCC's arrangement proceeding and therefore PCC properly voted for the plan as directed by the order without seeking further action by PCC's shareholders. That section 1320 was intended to create an exception to the requirements for shareholder approval set forth in sections 1311(B) and 2102 is made even clearer by subsection (2) of 1320 which specifically states, "Such corporation may, in the manner above provided . . . dissolve [or] transfer all or part of its assets. . . ." Thus, since no statutory provision or other authority makes illegal the vote of PCC's management in favor of the PCTC plan or makes improper the order authorizing that vote, we conclude that the order granting summary judgment against appellants with respect to the complaint in question should be affirmed.

The remaining issue is whether the district court properly confirmed PCC's plan of arrangement. Arrangements under Chapter XI are designed to readjust the rights of unsecured creditors, not shareholders. *See, In re Texas Consumer Finance Corp.*, 480 F.2d 1261 (5th Cir. 1973). Shareholder approval is not required for a Chapter XI plan of arrangement. Only unsecured creditors vote on whether to approve the plan. *See* Section 362 of Chapter XI of the Bankruptcy Act, 11 U.S.C. § 762. The Act provides that a plan of arrangement shall be confirmed if the court is satisfied that the plan "is for the best interests of the creditors and is feasible. . . ." 11 U.S.C. § 766. Shareholder approval is not required because an arrangement

under Chapter XI may not deal with the rights of shareholders. *In re Texas Consumer Finance Corp., supra*, 480 F.2d at 1265. A plan of arrangement which overcompensates unsecured creditors would interfere with the rights of shareholders. We must therefore determine whether the plan does overcompensate PCC's creditors and therefore whether the rights of PCC's shareholders have been prejudiced.

The only major indebtedness of the PCC is in the form of Swiss franc notes in the current equivalent of about 150 million dollars after deduction of a portion of the debt which is secured by PCTC stock. The Union Trust Company is the Trustee for the holders of these notes. PCC will receive, pursuant to the PCTC plan, a total of approximately 2,315,375 shares of the reorganized company's common stock.[6] Under the plan of arrangement, 60% or approximately 1.39 million shares of the common stock issued to PCC under the PCTC reorganization plan would be received by the holders of the Swiss franc notes and the remaining 40% would be received by PCC's shareholders.

As mentioned above,[7] there was testimony at the hearings on approval of the PCTC plan valuing the common stock at approximately $6 per share. At this valuation, the Swiss franc note holders would be receiving less than 8.5 million dollars on a 150 million dollar debt. Even according to the SEC's more optimistic valuation of the reorganization company's net worth,[8] the note holders would be receiving the equivalent of only about 36 million dollars. Thus, only if the Valuation Case recovery is so huge as to increase the value of the stock many times would the note holders receive more than they are owed. By any reasonable valuation of the compensation which the note holders are receiving under the plan of arrangement, they are not being overcompensated and therefore, PCC's share

6. Amended Plan of Reorganization for Penn Central Transportation Company, p. 23, Joint Appendix, Vol. I, Book 1, A-29.

7. *See* Note 4, *supra*.

8. *See id.*

holders are not prejudiced by the plan.[9] Since we also conclude that the plan is in conformance with all other requirements of law, we hold that the district court did not err in confirming the plan.[10]

For the foregoing reasons, the appeals from the orders of the reorganization court will be dismissed and the orders of the Chapter XI Court will be affirmed.

9. Appellants have not claimed that the liquidation of the PCC pursuant to the plan of arrangement is prejudicial *per se*. Liquidations pursuant to Chapter XI and Chapter X plans have been upheld where the circumstances so warrant. *See, e.g., In re Northern Illinois Development Corp.*, 324 F.2d 104 (7th Cir. 1963), *cert. denied*, 376 U.S. 938 (1964), (Chapter XI); *In re v. Loewer's Gambrinuus Brewery Co.*, 141 F.2d 747 (2d Cir. 1944) (Chapter X). The need to coordinate the PCTC plan with the PCC plan is adequate justification for allowing the liquidation here pursuant to a Chapter XI arrangement.

10. The appellants intimate that the PCC reorganization should have proceeded under Chapter X rather than Chapter XI. *See* Appellants' Brief in No. 78-2336, p. 17. No absolute rule governs whether a reorganization should be accomplished under Chapter XI. *See SEC v. American Trailer Rentals Co.*, 379 U.S. 594 (1965); *General Stores Corp. v. Shlensky*, 350 U.S. 463 (1956). There was no error in conducting the PCC proceedings under Chapter XI.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

Memorandum Opinion, December 12, 1978

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

CHAPTER XI CASE

In re PENN CENTRAL COMPANY and its wholly owned subsidiary, PENN CENTRAL INTERNATIONAL N.V.,
Debtors in Possession.

DR. ROBIN S. KEY,
Plaintiff.

v.

PENN CENTRAL COMPANY, *et al.*,
Defendants.

Bankruptcy No. 76-1469EG

MEMORANDUM OPINION

By EMIL F. GOLDHABER, *Bankruptcy Judge:*

The plaintiff, a shareholder of some of the common stock of the defendant, has filed a complaint seeking an order against the defendant (a) directing that an annual meeting of the stockholders be held within 60 days; (b) setting aside the declaration of support by the defendant of the plan of reorganization proposed by Penn Central Transportation Company; setting aside the defendant's vote, cast by its directors, in favor of said plan; setting aside this court's order of April 21, 1978, authorizing the defendant to vote in favor of

the plan; enjoining the defendant from taking any additional step toward consummation of the plans proposed by both Penn Central Transportation Company and by the defendant; and directing the defendant to oppose the "unfair and inequitable provisions of PCTC's Plan of Reorganization."

Some months ago the attorney representing the instant plaintiff filed a similar complaint on behalf of Joseph A. Schafer, *et al.*, (hereinafter referred to as "the Schafer Group") and, as in the case at bar, the present defendant filed a motion to dismiss which, after hearing, we granted. On appeal, Chief Judge Joseph S. Lord, III, affirmed, and an appeal is presently pending before the Court of Appeals for the Third Circuit. The complaint *sub judice* raises no additional facts or issues of law than those posed by the Schafer Group. Accordingly, for the same reasons that we sustained the defendant's motion to dismiss in that case, we will sustain the defendant's motion to dismiss in the case at bar.

Additionally, on November 27, 1978, the plaintiff filed a motion, under Rule 11-15(b) of the Rules of Bankruptcy Procedure, to transfer this Chapter XI case to a proceeding under Chapter X of the Bankruptcy Act. The aforesaid rule provides that

> At any time until 120 days after the first date set for the first meeting of creditors in the Chapter XI case, a motion may be made by the Securities and Exchange Commission or other party in interest to have the case proceed under Chapter X of the Act. . .

The first meeting of creditors in the present Chapter XI case was held on March 16, 1977. Hence the motion to transfer that case to a Chapter X proceeding, filed 20 months after the date of the first meeting, is untimely filed and must be

denied. The plaintiff argues that, since he had no notice of the first meeting of creditors, he should not be bound by the time limitation. Rule 11-24 mandates the court to give "the trustee or receiver, the debtor, and all creditors, including secured creditors, at least ten days' notice by mail of (1) a meeting of creditors." No provision is made for notice of the first meeting to shareholders. The reason is obvious: Chapter XI is designed only to modify or alter the rights of unsecured creditors and no provision of the Act permits a plan, proposed under Chapter XI, to deal with the rights of stockholders. Collier on Bankruptcy, Vol. 9, ¶8.01[3]. Since Chapter XI does not deal with the rights of stockholders, and since Rule 11-15(b) does not require that notice of the first meeting be mailed to stockholders, there is no merit to the plaintiff's complaint that, having received no notice, he could not avail himself of the right to seek a transfer of the Chapter XI case within 120 days of the first meeting.

ORDER

And now, to wit, this 12th day of December, 1978, after hearing, it is

ORDERED that the motion of the defendant, PENN CENTRAL COMPANY, *et al.*, to dismiss the complaint filed by DR. ROBIN S. KEY, is GRANTED: and it is

FURTHER ORDERED that the motion of DR. ROBIN S. KEY, under Rule 11-15(b) of the Rules of Bankruptcy Procedure, to have this Chapter XI case proceed under Chapter X of the Bankruptcy Act, is DENIED.

EMIL F. GOLDHABER,
Bankruptcy Judge.

November 13, 1978 Letter From the Supreme Court

SUPREME COURT OF THE UNITED STATES
Office of the Clerk
Washington, D.C. 20543

November 13, 1978

Cletus P. Lyman, Esquire
Lyman & Ash
1612 Latimer Street
Philadelphia, Pennsylvania 19103

Re: Joseph A. Schafer, *et al.* v. Trustees, Property of Penn Central Co., A-364

Dear Mr. Lyman:

The Court today entered the following order in the above-entitled case:

"The application for stay addressed to the Chief Justice and referred to the Court is denied."

Very truly yours,

MICHAEL RODAK, JR., Clerk,
By LAURENCE P. GILL,
Laurence P. Gill,
Deputy Clerk.

th

cc: Charles A. Horsky, Esquire
Covington & Burling
888 16th Street, N.W.
Washington, D.C. 20006

Gilbert W. Oswald, Esquire
Schnader, Harrison, Segal & Lewis
1719 Packard Building
Philadelphia, Pennsylvania 19102

October 24, 1978 Letter From the Supreme Court

SUPREME COURT OF THE UNITED STATES
Office of the Clerk
Washington, D. C. 20543

Cletus P. Lyman, Esquire
Lyman & Ash
1612 Latimer Street
Philadelphia, Pennsylvania 19103

October 24, 1978

Re: Joseph A. Schafer, *et al.* v. Trustees of the Property of Penn Central Transportation Company, debtor and Penn Central Company, debtor, A-364

Dear Mr. Lyman:

Your application for stay in the above-entitled case has been presented to Mr. Justice Brennan, who has endorsed thereon the following:

"Denied
Wm. J. Brennan, Jr.
10/23/78"

Very truly yours,

MICHAEL RODAK, JR., Clerk,
By FRANCIS J. LORSON
Francis J. Lorson,
Deputy Clerk

th

cc: Penn Central Transportation Co.
Law Department
Suite 3100, IVB Building
1700 Market Street
Philadelphia, Pennsylvania 19103

Gilbert W. Oswald, Esquire
1719 Packard Building
Philadelphia, Pennsylvania 19103

Clerk's Transmittal of October 16, 1978 and Order Denying Motion of October 17, 1978

UNITED STATES COURT OF APPEALS
For the Third Circuit

October 16, 1978

Nos. 78-1715, 78-2321 & 78-2336

In the Matter of
PENN CENTRAL TRANSPORTATION COMPANY,
Debtor,

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA, CHARLES W. HANNON, and PHILIP MORTON,
Appellants.

(D. C. No. B-70-347 In Bankruptcy)
Nos. 78-1715 & 78-2321

In the Matter of
PENN CENTRAL COMPANY,
Debtor,

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA, CHARLES W. HANNON, and PHILIP MORTON,
Appellants.

(D. C. No. B-76-1469 In Bankruptcy)
No. 78-2336

Clerk's Transmittal of October 16, 1978 and Order Denying Motion of October 17, 1978.

Present: ALDISERT, GIBBONS and HIGGINBOTHAM,
Circuit Judges.

1. Motion by appellants, Joseph A. Schafer, *et al.*, for stay of consummation of Penn Central Transportation Company Plan of Reorganization and Penn Central Company Plan of Arrangement, both scheduled to occur on October 24, 1978, pending final disposition of the above appeals, in this Court and in the Supreme Court of the United States,

in the above-entitled cases listed for argument during the week of October 16, 1978.

Respectfully,

T. F. QUINN/ags
Clerk.

ags

enc.

P.S.-If any answer are received they will be forwarded immediately to the panel.

The foregoing Motion is DENIED

By the Court,

ALDISERT
Judge.

Dated: October 17, 1978

Order Affirming August 21, 1978 Order

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In re: PENN CENTRAL COMPANY and its wholly owned subsidiary, PENN CENTRAL INTERNATIONAL N. V.,
Debtors-in-Possession.

Chapter XI Case

Bankruptcy No. 76-1469 EG

ORDER

AND NOW, this 12th day of October, 1978, upon consideration of the appeal of Joseph A. Schafer, *et al.*, the designated record, and the briefs and oral arguments of counsel, it is hereby ORDERED that the Order of the Bankruptcy Judge of August 21, 1978 confirming the Plan of Arrangement of the debtors-in-possession, be and it hereby is AFFIRMED.

JOSEPH S. LORD, III,
Ch. J.

Order Affirming August 16, 1978 Grant

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In re: PENN CENTRAL COMPANY and its wholly owned subsidiary, PENN CENTRAL INTERNATIONAL N.V.,
Debtors-in-Possession.

Chapter XI Case

Bankruptcy No. 76-1469

ORDER

AND NOW, this 10th day of October, 1978, upon consideration of the briefs and oral arguments of counsel, it is hereby ORDERED that the Order of the Bankruptcy Judge of August 16, 1978 granting the motion of Penn Central Company for summary judgment on the complaint of Joseph A. Schafer, *et al.* be and it hereby is AFFIRMED.

JOSEPH S. LORD, III,
Ch. J.

Order Confirming Plan, August 21, 1978

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In the Matters of
PENN CENTRAL COMPANY
and
its wholly owned subsidiary PENN CENTRAL INTERNATIONAL, N.V.,
Debtors-in-Possession.

Chapter XI Cases

Bankruptcy No. 76-1

ORDER CONFIRMING PLAN OF ARRANGEMENT OF PENN CENTRAL COMPANY AND PENN CENTRAL INTERNATIONAL N.V. UNDER CHAPTER XI

The Plan of Arrangement of Penn Central Company and Penn Central International N.V., filed on March 16, 1977, having been transmitted to their respective creditors, and its having been determined by this Court that the Plan has been accepted in writing in accordance with the provisions of Chapter XI of the Bankruptcy Act; and

The deposit required under Chapter XI and by the said Plan having been deposited in an account of the debtors-in-possession in a depository designated by this Court; and

Due notice of the hearing on confirmation having been given; and

Its having been determined after hearing (1) that the provisions of Chapter XI of the Bankruptcy Act have been complied with; (2) that the Plan is in the best interests of the creditors of the debtors-in-possession and is feasible; (3) that the debtors-in-possession have not been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt; and (4) that the Plan has been proposed and its acceptance procured in good faith, and not by any means, promises, or acts forbidden by the Bankruptcy Act;

It is this 21st day of August, 1978 ORDERED that:

1. the Plan of the debtors-in-possession, a copy of which is annexed hereto, marked Exhibit A, is confirmed;

2. the debtors-in-possession are released from all dischargeable debts;

3. any judgment heretofore or hereafter obtained in any court other than this Court is null and void as a determination of the liability of the debtors-in-possession with respect to any of the following: (a) debts not excepted from the discharge under Section 17(a) and (b) of the Bankruptcy Act; (b) debts discharged under Section 17(c)(2) of the Bankruptcy Act; and (c) debts determined to be discharged under Section 17(c)(3) of the Bankruptcy Act;

4. all creditors whose debts are discharged are enjoined from instituting or continuing any action or employing any process to collect such debts as liabilities of the debtors-in-possession;

5. that the debtors-in-possession be and they hereby are designated to distribute, subject to the control of this Court, the consideration deposited by them, except that the Trustees of the Penn Central Company shall, pursuant to the agree-

ment between them and Penn Central Company, which agreement was approved by this Court, and pursuant to the Plan of Reorganization of such Trustees, which Plan of Reorganization has been confirmed by the Trustees' reorganization court, distribute the shares of stock of the reorganized Penn Central Transportation Company as provided in the Plan of Arrangement;

6. the monies deposited or reserved for payment of priority debts be disbursed to the claimants holding such priority debts upon further order of this Court;

7. that the money deposited for the payment of the costs and expenses of the proceedings, including attorneys' and accountants' fees and expenses awarded by this Court, be disbursed upon further order of this Court;

8. parties in interest may file objections to any timely claims within ninety days of the entry of this Order.

9. this Court shall retain jurisdiction over these Chapter XI cases for the purpose of and until consummation of the Plan.

By the Court:

EMIL F. GOLDHABER,
Bankruptcy Judge.

Consummation Order and Final Decree, August 17, 1978

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In the Matter of PENN CENTRAL TRANSPORTATION COMPANY. *Debtor*	In Proceedings for the Reorganization of a Railroad No. 70-347
ORDER NO. 3708	
THE UNITED NEW JERSEY RAILROAD & CANAL COMPANY.	No. 70-347-A
ORDER NO. 211	
BEECH CREEK RAILROAD COMPANY.	No. 70-347-B
ORDER NO. 134	
THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.	No. 70-347-C
ORDER NO. 216	
THE CLEVELAND AND PITTSBURGH RAILROAD COMPANY.	No. 70-347-D
ORDER NO. 162	
THE CONNECTING RAILWAY COMPANY.	No. 70-347-E
ORDER NO. 176	
THE DELAWARE RAILROAD COMPANY.	No. 70-347-F
ORDER NO. 157	
ERIE AND PITTSBURGH RAILROAD COMPANY.	No. 70-347-G
ORDER NO. 138	
THE MICHIGAN CENTRAL RAILROAD COMPANY.	No. 70-347-H
ORDER NO. 150	

THE NORTHERN CENTRAL RAILWAY COMPANY, } No. 70-347-I

ORDER NO. 162

PENNDEL COMPANY, } No. 70-347-J

ORDER NO. 158

THE PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY, } No. 70-347-K

ORDER NO. 275

THE PHILADELPHIA AND TRENTON RAIL ROAD COMPANY, } No. 70-347-L

ORDER NO. 143

THE PITTSBURGH, YOUNGSTOWN & ASHTABULA RAILWAY COMPANY, } No. 70-347-M

ORDER NO. 137

PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY COMPANY, } No. 70-347-N

ORDER NO. 151

UNION RAILROAD COMPANY OF BALTIMORE, } No. 70-347-O

Secondary Debtors

ORDER NO. 138

CONSUMMATION ORDER AND FINAL DECREE

AND NOW, this 17th day of August, 1978, upon consideration of the PETITION OF TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR, FOR ENTRY OF ORDERS CONFIRMING AND AUTHORIZING CONSUMMATION OF PLANS OF REORGANIZATION (Petition), the answers and responses thereto and the entire record in these proceedings, and after a duly noticed hearing on the Petition, it appearing that:

1. This Court has exclusive jurisdiction of the Debtor and the Secondary Debtors (the Debtor and the Secondary Debtors to be referred to collectively as the Debtors) and their properties, wherever located.

2. This Court has exclusive jurisdiction of all claims, rights, demands, interests, liens and encumbrances of every kind and character of creditors of, or claimants against, the Debtors or their properties, whether or not properly or timely filed and whether or not approved in these proceedings.

3. The Plan of Reorganization for Penn Central Transportation Company (PCTC Plan) and the Plans of Reorganization for each of the Secondary Debtors (Secondary Debtor Plans) were duly approved on March 17, 1978, and confirmed on August 17, 1978, pursuant to the following orders:

		Approval Order No.	*Confirmation Order No.*
Penn Central Transportation Company	No. 70-347	3455	3707
The United New Jersey Railroad and Canal Company	No. 70-347-A	187	210
Beech Creek Railroad Company	No. 70-347-B	115	133
The Cleveland, Cincinnati, Chicago and St. Louis Railway Company	No. 70-347-C	195	215
The Cleveland and Pittsburgh Railroad Company	No. 70-347-D	139	161
The Connecting Railway Company	No. 70-347-E	155	175
The Delaware Railroad Company	No. 70-347-F	136	156
Erie and Pittsburgh Railroad Company	No. 70-347-G	119	137

		Approval Order No.	*Confirmation Order No.*
The Michigan Central Railroad Company	No. 70-347-H	131	149
The Northern Central Railway Company	No. 70-347-I	145	161
Penndel Company	No. 70-347-J	139	157
The Philadelphia, Baltimore & Washington Railroad Company	No. 70-347-K	243	274
The Philadelphia and Trenton Rail Road Company	No. 70-347-L	126	142
The Pittsburgh, Youngstown and Ashtabula Railway Company	No. 70-347-M	121	136
Pittsburgh, Fort Wayne & Chicago Railway Company	No. 70-347-N	132	150
Union Railroad Company of Baltimore	No. 70-347-O	121	137

It is hereby ORDERED that:

I. *APPROVAL OF DOCUMENTS, DIRECTORS, FIDUCIARIES AND AGENTS*

1.01. *Approval of Documents.* The form and substance of each of the following documents, as filed with this Court in connection with the "Petition of Trustees for Approval of Indentures and Other Documents Relating to Plan of Reorganization" (Document No. 15716), as filed in connection with the Petition and, as further amended by any reports of the PCTC Trustees to this Court to the date hereof, and, in the case of the Indenture of Mortgage and Deed of Trust Securing Series B Notes, as further amended by the Settlement Agreement between the PCTC Trustees and Consolidated Rail Corporation approved by Order No. 3695, are approved, subject to the reservation of one issue and the amendments specified in paragraph 1.02, and are found and adjudged to be in all respects in accordance with the true intent and requirements of the Plans and to be appropriate and proper to carry them into effect:

(a) Amended and Restated Articles of Incorporation of The Penn Central Corporation, which shall be the name of the reorganized Penn Central Transportation Company as of the Consummation Date;

(b) ByLaws of The Penn Central Corporation;

(c) New form of Trustees' Certificate due 1986;

(d) Series B Secured Note;

(e) Series C-1 Secured Note;

(f) Series C-2 Secured Note;

(g) Series D Serial Secured Note;

(h) Series D Term Secured Note;

(i) Series A General Mortgage Bond;

(j) Series B General Mortgage Bond;

(k) Certificate of Beneficial Interest;

(l) Series A and Series B Preference Stock Certificates;

(m) Common Stock Certificate;

(n) Indenture of Mortgage and Deed of Trust dated as of the Consummation Date between The Penn Central Corporation and Marine Midland Bank securing the Trustees' Certificates due 1986;

(o) Amendment to Guaranty Agreement dated as of the Consummation Date relating to the Trustees' Certificates due 1986;

(p) Indenture of Mortgage and Deed of Trust dated as of the Consummation Date between The Penn Central Corporation and Girard Bank securing the Series B Secured Notes;

(q) Indenture of Mortgage and Deed of Trust dated as of the Consummation Date between The Penn Central Corporation and Mellon Bank N.A. securing the Series C Secured Notes;

(r) Indenture of Mortgage and Deed of Trust dated as of the Consummation Date between The Penn Central Corporation and The Philadelphia National Bank securing the Series D Secured Notes;

(s) Indenture of Mortgage and Deed of Trust dated as of the Consummation Date between The Penn Central Corporation and United States Trust Company of New York securing the Series A General Mortgage Bonds;

(t) Indenture of Mortgage and Deed of Trust dated as of the Consummation Date between The Penn Central Corporation and The First National Bank of Boston securing the Series B General Mortgage Bonds;

(u) Valuation Case Proceeds Trust Agreement dated as of the Consummation Date among The Penn Central Corporation, the Reorganized Secondary Debtors, certain other grantors and First Pennsylvania Bank N.A.;

(v) Form of Letter of Instructions to Exchange Agent and, as attached thereto, forms of Notice of Exchange and Availability of Securities and Letters of Transmittal;

(w) Forms of instrument of assumption by The Penn Central Corporation of the lease between the Debtor and The New York and Harlem Railroad Company and instruments implementing the provisions of Part O of Appendix II of the PCTC Plan;

(x) Forms of instruments of satisfaction of various mortgages and collateral trust indentures;

(y) Forms of instruments of release and satisfaction of claims;

(z) Forms of deeds and other instruments of release or assignment conveying all right, title and interest of the PCTC Trustees in and to the Debtor's properties to The Penn Central Corporation or The Owasco River Railway and conveying all right, title and interest of the Secondary Debtor Trustees in and to the Secondary Debtors' properties to the Reorganized Secondary Debtors; and

(aa) Indemnification Resolution of The Penn Central Corporation.

Insofar as the provisions of any documents approved above involve a construction or interpretation of the Plans, such construction or interpretation is hereby approved.

1.02. *Amendments to and Reservation of Jurisdiction with Respect to Documents.* The covenants in the respective indentures providing that the reorganized Company shall prosecute the *Valuation Case* in such manner as the Board of Directors determines "to be in the best interests of the Company" is amended to read the Board of Directors determines "will maximize the Valuation Case Proceeds," and the following shall be added: "Nothing in this Section shall require the Company to expend more time or money on the prosecution of the Valuation Case than would reasonably be expended by a claimant entitled to all the Valuation Case Proceeds." The granting clauses of the A and B Bond Indentures shall be amended by addition of the term "security interest." The Exchange Agent Documents shall be appropriately amended to permit Class E & I Creditors (tax claimants) to elect to receive their distributions by appearing in person through a designated agent at the offices of the Ex-

change Agent or the PCTC Trustees, whichever is specified in the amendments prepared by the PCTC Trustees. The Court reserves jurisdiction to order amendments to Section 5.01 of the A & B Bond Indentures.

1.03. *Power to Make Certain Corrections.* Before the execution, delivery or filing of any documents referred to in Section 1.01 above, the Trustees of the property of Penn Central Transportation Company, Debtor (PCTC Trustees), the respective Trustees of the property of each of the Secondary Debtors (Secondary Debtor Trustees)* and the Reorganized Company are authorized to make or cause to be made any necessary typographical or clerical corrections, to fill in any blanks and to make any clarifying or conforming changes in such documents which do not materially change the substance thereof.

1.04. *Approval of Fiduciaries and Agents.* The following fiduciaries and agents to carry out the Plans are hereby approved:

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* For purposes of this Order, any reference to "Secondary Debtor Trustees" shall include The Connecting Railway Company, debtor in possession. Actions directed in this Order to Secondary Debtor Trustees shall be interpreted as being directed to the board of directors of said debtor in possession, or the stockholders thereof, as may be necessary or appropriate.

Position	*Name of Fiduciary or Agent*
Trustee under the Trustees' Certificates due 1986 Indenture	Marine Midland Bank
Trustee under the Series B Note Indenture	Girard Bank
Trustee under the Series C Note Indenture	Mellon Bank N.A.
Trustee under the Series D Note Indenture	The Philadelphia National Bank
Trustee under the Series A General Mortgage Bond Indenture	United States Trust Company of New York
Trustee under the Series B General Mortgage Bond Indenture	The First National Bank of Boston
Trustee under the Valuation Case Proceeds Trust Agreement	First Pennsylvania Bank N.A.
Transfer Agent and Registrar for Certificates of Beneficial Interest, Preference Stock and Common Stock	Registrar and Transfer Company
Exchange Agent	First Pennsylvania Bank N.A.
Exchange Agent for Trustees' Certificates due 1986	Federal Reserve Bank of New York

1.05. *Approval of Directors.* The following persons, who have been duly selected by the following groups of creditors, claimants and stockholders pursuant to Section 8.1 of the PCTC Plan to serve on the initial board of directors of the Reorganized Company, are hereby constituted, effective as of the Consummation Date, directors of the Reorganized

Company to serve as provided in Article TENTH of the Amended and Restated Articles of Incorporation:

Group	*Directors*
Institutional Investors	Richard Dicker George M. Crandles James H. Torrey
Indenture Trustees	Ralph E. Kent
Secured Banks	John W. Ingraham William F. Ludwig John H. Williams
New Haven Trustee	Richard Joyce Smith
Unsecured Creditors	Roland E. Remley, III Joseph E. Smith
Stockholder of Debtor	Alvin Friedman

As of or after the Consummation Date, the Reorganized Company is authorized and directed to elect persons to serve on the respective boards of directors of each of the Reorganized Secondary Debtors.

II. *CONSUMMATION DATE*

2.01. *Consummation Date.* "Consummation Date", as defined in Section 1.12 of the PCTC Plan, shall be October 24, 1978.

2.02. *Closing and Opening Books.* The PCTC Trustees shall cause the books and accounts of the Debtor and each of the Secondary Debtors to be closed as of the 11:59 P.M., E.D.T., on the Consummation Date. The books and accounts of the Reorganized Company shall be opened as of 12:00 A.M., E.D.T., on the day following the Consummation Date.

III. *TRANSFER OF PROPERTIES AND DISCHARGE*

3.01. *Existing Common Stock of Debtor.* The PCTC Trustees and the Reorganized Company, as the case may be, are authorized and directed to take any steps necessary and appropriate to (i) amend the articles of incorporation of the Debtor to reduce the number of outstanding shares of common stock of the Debtor from 24,113,703 to 241,137, (ii) following such reduction of the outstanding shares of the Debtor, to facilitate the sale and transfer, to be effective prior to the Consummation Date, of such shares and certain other assets of Penn Central Company to Cleveland Technical Center, Inc., a wholly-owned subsidiary of the Debtor and (iii) to preserve the present affiliated group, for federal income tax purposes, with the Reorganized Company as the common parent, consistently with the Internal Revenue Service ruling letter dated March 28, 1978.

3.02. *Property Located in State of New York.* Effective as of the Consummation Date, all right, title and interest of the Debtor or the PCTC Trustees in real property and personal property of the Debtor located in the State of New York, including without limitation interests in railroad rights-of-way and appurtenant facilities and executory contracts pertaining to property of the Debtor located in the State of New York assumed as provided in Section 6.03(g) below, but excluding (i) securities, accounts and similar items, (ii) rights to operate rights of way and appurtenant facilities for railroad purposes, (iii) lessee interests of the Debtor or the PCTC Trustees and (iv) real property which is described in Schedule II of the Indentures approved in Section 1.01 above and tangible personal property, the sale of which, as of the Consummation Date, has been approved by the PCTC Trustees, shall be transferred to and vested in The Owasco River Railway

(Owasco), a New York corporation which is a wholly-owned subsidiary of the Debtor, the laws of any state or the decision or order of any state authority to the contrary notwithstanding. Such property shall be transferred to, vested in and become the absolute property of Owasco and shall, except as satisfied or expressly assumed as provided in Section 6.03 below, be free and clear of all claims, rights, demands, interests, liens and encumbrances of every kind and character, whether or not properly or timely filed and whether or not approved, acknowledged or allowed in these proceedings, of the Debtor, the Secondary Debtors and Penn Central Company, their creditors, claimants and stockholders.

3.03. *Vesting or Transfer of Other Properties.* Effective as of the Consummation Date:

(a) except for the property transferred to Owasco in accordance with Section 3.02 above, and property and estate of the Debtor, of every name and nature, including without limitation all claims and rights of the Debtor in and to the Valuation Case and to Valuation Case Proceeds, as those terms are defined in the PCTC Plan, in any form, all right, title and interest therein of the PCTC Trustees and all securities of the Secondary Debtor to be received by the Reorganized Company pursuant to the Secondary Debtor Plans as a dividend from Pennsylvania Company (Pennco), shall, the laws of any state or the decision or order of any state authority to the contrary notwithstanding, be transferred to, vest in and become the absolute property of the Reorganized Company and shall, except as satisfied or expressly assumed as provided in Section 6.03 below, be free and clear of all claims, rights, demands, interests, liens and encumbrances of every kind and character, whether or not properly or timely filed and whether or not approved, acknowledged or allowed

in these proceedings, of the Debtor, the Secondary Debtors and Penn Central Company, their creditors, claimants and stockholders;

(b) notwithstanding the provisions of Order No. 10 in the Debtor's proceedings, the PCTC Trustees shall cause Pennco (i) to cancel or distribute to the Reorganized Company for cancellation any advances payable by any Secondary Debtor to Pennco or any of its subsidiaries or any other indebtedness of any Secondary Debtor to Pennco or any of its subsidiaries and any bonds issued or assumed by any Secondary Debtor and held by Pennco or any of its subsidiaries and (ii) to declare a dividend to the Reorganized Company of the stock of the Secondary Debtors presently held by Pennco and to be received by the Reorganized Company pursuant to the Secondary Debtor Plans;

(c) all the business and affairs and the entire assets and property and estate of each of the Secondary Debtors, of every name and nature, including without limitation all claims and rights of the Secondary Debtors in and to the Valuation Case and to Valuation Case Proceeds, as those terms are defined in the PCTC Plan, in any form, and all right, title and interest therein of the Secondary Debtor Trustees, shall, the laws of any state or the decision or order of any state authority to the contrary notwithstanding, be transferred to, vest in and become the absolute property of the respective Reorganized Secondary Debtors and shall, except as satisfied or expressly assumed as provided in Section 6.03 below, be free and clear of all claims, rights, demands, interests, liens and encumbrances of every kind and character, whether or not properly or timely filed and whether or not approved, acknowledged or allowed in these proceedings,

of the Debtor, the Secondary Debtors and Penn Central Company, their creditors, claimants and stockholders;

(d) all right, title and interest in and to Valuation Case Proceeds to be received by the Reorganized Company or the Reorganized Secondary Debtors shall, in accordance with the terms and provisions of the Valuation Case Proceeds Trust Agreement, dated as of the Consummation Date, among the Reorganized Company, the Reorganized Secondary Debtors, any other grantors and First Pennsylvania Bank N.A., be transferred to and vested in First Pennsylvania Bank N.A., as trustee under such Trust Agreement, which transfer is hereby found to be valid under and permitted by the Assignment of Claims Act, 31 U.S.C. 203, for the sole purpose of securing and effecting the payment of the securities of the Reorganized Company, and in furtherance thereof all Valuation Case Proceeds shall be delivered by the Reorganized Company, the Reorganized Secondary Debtors and any other grantors to the trustee thereunder to be distributed by the trustee pursuant to the Trust Agreement; and

(e) the properties, rights, title and interests of the Reorganized Company shall be conveyed and pledged to the trustees under the Indentures of Mortgage and Deeds of Trust securing the Trustees' Certificates due 1986, the Secured Notes and the General Mortgage Bonds as and to the extent required by such Indentures in the forms approved in Section 1.01 above.

3.04. *Conveyance from the Trustees of the Debtors.* In furtherance and in confirmation of the transfers to Owasco, the Reorganized Company and the Reorganized Secondary Debtors of the assets and properties described in Sections 3.02, 3.03(a) and 3.03(c) above, the Trustees of the properties of

the Debtors, or their designees, are authorized and directed to execute and deliver to Owasco, the Reorganized Company and the Reorganized Secondary Debtors deeds transferring all such assets and property, effective as of the Consummation Date. Such deeds will be substantially in the forms approved in Section 1.01 above. The Trustees of the properties of the Debtors, or their designees, are authorized and directed prior to the Consummation Date, and such persons as the Trustees may by resolution designate to act on behalf of the Trustees are authorized and directed after the Consummation Date, if necessary, to execute and deliver to Owasco, the Reorganized Company and the Reorganized Secondary Debtors any and all such further deeds, conveyances, bills of sale, assignments, transfers and other instruments as may be necessary or proper for more fully and certainly conveying, assigning, transferring and delivering to Owasco, the Reorganized Company and the Reorganized Secondary Debtors all of the right, title and interest of the Trustees of the Debtors in and to the properties formerly of the Debtors.

3.05. *Disposition Of Funds Held By Trustees, Indenture Trustees, Paying Agents, etc.* Effective as of the Consummation Date, all of the funds held by any of the Trustees in such capacity and all of the funds of any of the Debtors or their predecessors, including without limitation (i) funds or securities heretofore deposited by any of the Trustees of the property of the Debtors, the Debtors themselves, or their predecessors for the payment or partial payment of securities, interest, interest coupons or dividends, (ii) funds representing proceeds from sales of properties of the Debtors or their predecessors, and (iii) funds held pursuant to orders of the Court by any and all indenture trustees, paying agents, escrow agents or fiduciaries, shall vest absolutely and without

restriction in the Reorganized Company or in the respective Reorganized Secondary Debtors, as the case may be, and shall be paid thereafter by each such person holding any such funds to or upon the order of the Reorganized Company. Such payments to or upon the order of the Reorganized Company shall be good and sufficient discharge of any liability of any such person for such funds.

3.06. *Discharge and Release of Claims.* Subject to the provisions of Section 6.03 below relating to the payment, assumption or satisfaction by the Reorganized Company of certain claims, the Debtors and the Trustees of the properties of the Debtors shall, as of the Consummation Date, be discharged and released forever from

(a) all obligations, debts, liabilities and claims against any of the Debtors, whether or not filed or presented, whether or not approved, acknowledged or allowed in these proceedings and whether or not provable in bankruptcy, including without limitation taxes in respect of non-bankrupt leased lines and other subsidiaries which are being satisfied pursuant to the Plans and all claims assumed or guaranteed by any of the Debtors or enforceable against the property of any of the Debtors;

(b) all obligations, debts, liabilities and claims arising from costs and expenses of administration, whether or not filed or presented and whether or not approved, acknowledged or allowed in these proceedings, including without limitation all taxes (including taxes in respect of non-bankrupt leased lines and other subsidiaries which are being satisfied pursuant to the Plans), assessments, claims and other charges of governmental units or agencies, whenever assessed, accruing prior to the Consummation Date; and

(c) all obligations, debts, liabilities and claims with respect to all bonds, coupons, debentures, notes, certificates, evidences of indebtedness, shares of stock, securities and leases (including interest accrued and dividends declared), without limitation as to their nature and whether made, assumed or guaranteed by any of the Debtors or Trustees or enforceable against any of them or the property of any of them.

3.07. *Mutual Discharge and Release Between Debtor and Each Secondary Debtor.* Subject to the provisions of Section 6.03 below relating to the payment, assumption or satisfaction by the Reorganized Company of certain claims, the PCTC Trustees and the Debtor, and any predecessor, successor, claimant, creditor or stockholder of any of them, on the one hand, and each of the Secondary Debtor Trustees and Secondary Debtors, and any predecessor, successor, claimant, creditor or stockholder of any of them, on the other hand, shall, as of the Consummation Date, be mutually discharged and released from any and all claims, demands, debts and liabilities between them of whatever nature, whether or not arising pursuant to the leases between the Debtor and each Secondary Debtor. In furtherance of such mutual release and discharge, the PCTC Trustees and Secondary Debtor Trustees are authorized and directed to execute and deliver as of the Consummation Date instruments of release and discharge substantially in the form approved in Section 1.01 above.

3.08. *Discharge and Release of Mortgages.* All mortgages, indentures, collateral trust indentures and other instruments entered into by any of the Debtors, or their predecessors, that now constitute or heretofore constituted a lien on any of the property of any of the Debtors, other liens of record on such property, all mortgages, indentures, collateral trust indentures or instruments supplementing or modifying the same

and all covenants therein contained shall, as of the Consummation Date, become, and thereafter forever remain, satisfied, discharged, released, cancelled, null and void and of no effect whatever. All right, title and interest of the respective trustees of mortgages and indentures secured by liens on the property of the Debtors is hereby transferred to and vested in the Reorganized Company, Owasco, and the Reorganized Secondary Debtors, as the case may be, as of the Consummation Date. In furtherance and confirmation of such discharge and release of mortgages and indentures, each trustee now acting under such mortgages, indentures, collateral trust indentures or other instruments is hereby authorized and directed to execute and deliver as of the Consummation Date deeds or instruments of release, discharge and satisfaction substantially in the forms approved in Section 1.01 above. Each such trustee is also authorized and directed to execute and deliver as of the Consummation Date adequate deeds or instruments of release, discharge, transfer, conveyance and satisfaction to assure that properties conveyed by any of the Debtors or their predecessors prior to the commencement of their respective reorganization proceedings to good faith purchasers will be free and clear of all liens and claims, as provided in Section 11.1 of the PCTC Plan and in Sections 9.1 of the respective Secondary Debtor Plans, and to take all such action as the Trustees, the Reorganized Company, Owasco or the Reorganized Secondary Debtors may request to enable such deeds or other instruments to be duly recorded. Whether executed before or after the Consummation Date, each of said instruments shall be effective as of the Consummation Date. From and after the Consummation Date, upon compliance with the provisions of this Section 3.08, each such mortgage and indenture trustee shall be discharged as a trustee and relieved of all its obligations, re-

sponsibilities and duties. Each trustee acting under such mortgages and indentures is authorized and directed to transfer, convey, release and deliver to or upon the order of the Reorganized Company as of the Consummation Date all sums of money in its hands, or subject to its disposition, as trustee, paying agent, escrow agent or fiduciary, as provided in Section 3.05 above, and all shares of stock, evidences of indebtedness, other securities, credits, choses in action and other property, rights and interests of every kind or description held or claimed by it as trustee, paying agent, escrow agent or fiduciary. The execution of instruments and the transfer and delivery of properties pursuant to this Section 3.08 shall be solely for the purpose of releasing and conveying to the Reorganized Company, Owasco and the Reorganized Secondary Debtors whatever interest such trustees have as trustees, paying agents, escrow agents or fiduciaries, and no personal covenant or liability shall be implied against or be assumed or undertaken by any such trustee by virtue of compliance with this Order. Each such trustee is hereby further authorized and directed, from time to time after the Consummation Date, to execute all such other and further instruments of discharge, release, satisfaction, transfer, conveyance or assignment and to make all further transfers and deliveries as may be necessary or desirable for more fully and certainly vesting in the Reorganized Company, Owasco and the Reorganized Secondary Debtors all right, title and interest of such trustees and for more fully and certainly accomplishing the release, discharge, cancellation and satisfaction to the instruments under which such trustees were respectively appointed and acting.

3.09. *Cancellation or Destruction.* The Reorganized Company is hereby authorized, from time to time, to cause the cancellation or destruction of all bonds, coupons, debentures, notes, certificates, evidences of indebtedness, shares of stock and other securities or evidences of interest therein (i) that evidence claims surrendered to the Reorganized Company by any of the holders of such instruments for exchange for cash payable or securities issuable under the Plans or (ii) issued under any of the mortgages, indentures, deeds or agreements referred to in Section 3.08 above.

3.10 *Discharge of Trustees.* The periodic reports of revenues and expenses and balance sheets filed prior to the date of this Order by the PCTC Trustees pursuant to paragraph 8 of Order No. 1 in these proceedings, as amended by Order No. 2552, are hereby accepted and approved. As of the Consummation Date, the PCTC Trustees and the Secondary Debtor Trustees shall be discharged and relieved of any further duties and responsibilities in respect of the administration of the property or the conduct of the business and affairs transferred to the Reorganized Company, Owasco and the Reorganized Secondary Debtors on the Consummation Date. Thereupon, the Trustees shall no longer have any power and authority or duties and responsibilities to take any action on behalf of or in respect to the Reorganized Company, Owasco or the Reorganized Secondary Debtors or in respect of the implementation of the Plans; provided, however, that the PCTC Trustees are authorized and directed to prepare a final report as provided in Section 7.05 below. Any person who failed, as required by Order No. 3630 setting a hearing on the Petition, to file any claims or actions of any nature against any current or former Trustee of any of the Debtors, in his personal capacity, based on any alleged act or

failure to act in respect of the administration of the Debtors shall be forever barred from asserting any such claims or actions against any such Trustee, any of the Debtors, the Reorganized Company or the Reorganized Secondary Debtors. The current and former Trustees of the properties of the Debtors, the Debtors, the Reorganized Company and the Reorganized Secondary Debtors shall be forever discharged and released from any liability with respect to any such claims or actions. Any such claims or actions which may arise prior to the Consummation Date shall be filed with the Court and served upon such Trustee and the Reorganized Company not later than 30 days after the Consummation Date or be forever barred. Any such claim or action shall be in writing and shall state with particularity the nature of the claim or action and the relief sought. The PCTC Trustees shall publish a notice, within 14 days after the date of this Order, in the newspapers listed in Order No. .... setting a hearing on the Petition, stating that such claims must be filed or be forever barred.

IV. *NEW SECURITIES AND DISTRIBUTION*

4.01 *Capitalization of the Reorganized Company.* The Reorganized Company is authorized to issue or, in the case of Trustees' Certificates due 1986, to have outstanding the following securities as of the Consummation Date:

Trustees' Certificates due 1986 in the principal amount of	$ 50,000,000
Series B Secured Notes in the approximate principal amount of	$380,000,000
Series C-1 Secured Notes in the approximate principal amount of	$125,000,000

Series C-2 Secured Notes in the approximate principal amount of $120,000,000

Series D Serial Secured Notes in the approximate principal amount of ..... $ 85,000,000

Series D Term Secured Notes in the approximate principal amount of $130,000,000

Series A General Mortgage Bonds in the approximate principal amount of $360,000,000

Series B General Mortgage Bonds in the approximate principal amount of $220,000,000

Certificates of Beneficial Interest in the approximate principal amount of $220,000,000

Preference Stock, not to exceed a total of 30 million shares, approximately as follows:

Series A Preference ..... 1,716,850 shares
Series B Preference ..... 26,185,750 shares

Common Stock, not to exceed 40 million shares, of approximately ..... 23,394,887 shares

Additional amounts of the securities listed above may be issued in accordance with any applicable limitations and for the purposes set forth in the respective indentures, the articles of incorporation of the Reorganized Company, further orders of this Court and the terms of Section 10.3 of the PCTC Plan and Sections 8.2 of the Secondary Debtor Plans. The

Reorganized Company is authorized to issue Series A Secured Notes and Series E Notes in such amounts, under such circumstances and having such terms and conditions as are set forth in the Plans and to take such actions as may be necessary to do so, including execution of new or supplemental indentures.

4.02. *Notice of Availability of New Securities.* As promptly as possible, but not later than 21 days after the Consummation Date, the Reorganized Company shall publish a Notice of Exchange and Availability of Securities (Notice), substantially in the form approved pursuant to Section 1.01(v) above, and shall cause the Exchange Agent to mail, not later than 14 days after the Consummation Date, a copy of the Notice to each holder of securities of any of the Debtors and to each claimant (i) whose identity and address is known to the Reorganized Company, (ii) who is entitled to participate under any of the Plans and (iii) who is a holder of a security or whose claim has been approved, acknowledged or allowed as of the Consummation Date. Prior to the Consummation Date, the Trustees shall take such steps as may be necessary and desirable to discontinue trading in such securities as of the Consummation Date and to record, within ten days after the Consummation Date, all trades and transfers which occur prior to the discontinuance of trading. Pursuant to an agreement between the PCTC Trustees and Penn Central Company, the Reorganized Company shall cause the Exchange Agent to mail a copy of the Notice as promptly as possible to each person entitled to receive Common Stock in connection with the plan of arrangement of Penn Central Company. The Notice shall be published once a week for two successive weeks in each of the following newspapers:

Arizona Phoenix Republic Gazette
Atlanta Journal-Constitution
Baltimore Sun
Birmingham News Post
Boston Globe
Buffalo Courier Express
Charleston Gazette-Mail
Charleston Post News & Courier
Charlotte Observer News
Chicago Tribune
Cincinnati Enquirer
Cleveland Plain Dealer
Dallas News
Denver Post
Des Moines Register Tribune
Detroit Free Press
Dover Delaware State News
The Financial Post (Canada)
The Financial Times (Canada)
Financial Times of London
Houston Chronicle
Hartford Courant
Indianapolis Star
International Herald Tribune
Jacksonville Times Union
Kansas City Star-Times
Los Angeles Times
Louisville Courier-Journal
Memphis Commercial Appeal
Miami Herald
Milwaukee Journal-Sentinel
Minneapolis Star-Tribune

Neue Zuercher Zeitung
New Orleans Times Picayune
New York Times
Norfolk Virginian Pilot Ledger
Oklahoman Times
Omaha World Herald
Philadelphia Inquirer
Pittsburgh Post Gazette
Portland Journal
Providence Journal-Bulletin
Richmond News Leader-Time Dispatch
St. Louis Globe-Democrat
Salt Lake City - Deseret News
San Francisco Chronicle Examiner
Seattle Times
Trenton Times
Wall Street Journal (all domestic and Asian editions)
Washington Post

The Reorganized Company shall cause the Exchange Agent to mail a copy of the Notice to each claimant who is entitled to participate under any of the Plans, whose address is known and whose claim is approved, acknowledged or allowed subsequent to the Consummation Date as promptly as possible after the date upon which the claim is so approved, acknowledged or allowed.

4.03. *Issuance and Delivery of New Securities and Payment of Cash.*

(a) The Reorganized Company and the fiduciaries and agents referred to in Section 1.04 above shall, as promptly as practicable and in accordance with the instructions of the Reorganized Company given pursuant to the provisions of

this Order and the Plans, execute the mortgages, indentures and other instruments and documents related to the issuance and delivery of the securities of the Reorganized Company substantially in the respective forms approved in Section 1.01 above and authenticate, issue and deliver the new securities in accordance with and as contemplated by the documents approved in Section 1.01 above and in accordance with the provisions of this Order and the Plans.

(b) The Trustees' Certificates due 1986, Secured Notes, General Mortgage Bonds, Certificates of Beneficial Interest, Preference Stock and Common Stock shall be issued and delivered to the respective indenture trustees and to the Registrar as of the Consummation Date. The trustee under the indenture securing the Trustees' Certificates due 1986 shall authenticate and deliver new Trustees' Certificates to the Federal Reserve Bank only upon subsequent exchanges, transfers or replacements of the presently outstanding Trustees' Certificates. The other new securities of the Reorganized Company will be authenticated and delivered by the indenture trustees or countersigned and delivered by the Registrar to the Exchange Agent upon requisition by the Exchange Agent.

(c) As of the Consummation Date, the Reorganized Company shall set aside such amounts of cash and investments as may be necessary to implement the Plans and this Order and as required or permitted by the indentures referred to in Section 1.01 above for the following purposes and in the following estimated amounts:

Purpose	*Estimated Amounts*
Payments to claimants in:	
Class A	$ 50.0 million
Classes E and I	123.9 million
Classes J (PCTC Plan and Secondary Debtor Plans) and 0 (Secondary Debtor Plans)	223.0 million
Class N	3.5 million
Payments for personal injury and wrongful death claims	10.0 million
Working Cash and settlements	102.3 million
Total	$512.7 million

As of the Consummation Date, the Reorganized Company shall provide to the Exchange Agent drafts, payable through a Philadelphia bank, to be used to disburse such cash as the Exchange Agent is required to disburse pursuant to the Plans, and the Reorganized Company shall honor such drafts, if properly endorsed, upon presentation.

(d) From and after the date or dates stated in the Notice to be published in accordance with Section 4.02 above, the Exchange Agent shall, in accordance with the Letter of Instructions referred to in Section 1.01 above, make delivery of the new securities and drafts for cash in the respective amounts provided in the Plans to holders of securities of any of the Debtor as of the Consummation Date upon proper surrender of such old securities and to other claimants and

creditors upon execution and delivery of releases substantially in the forms approved in Section 1.01 above; provided, however, that (i) holders of stock of Secondary Debtors shall also provide the Reorganized Company with information requested concerning the basis, for federal income tax purposes, of such stock, (ii) any such holder of securities, claimant or creditor against whom any of the Debtors has a pre-bankruptcy claim which has not, contrary to prior orders of this Court prohibiting setoffs, been satisfied or against whom any of the Trustees has an unpaid post-bankruptcy claim which has been liquidated shall pay such claims in cash and shall be entitled to receive a distribution of securities or cash pursuant to any of the Plans only at such time as such claim of the Debtors or Trustees is fully satisfied by payment of cash to the Reorganized Company or by deduction of the amount of such claim from any cash to which such holder of securities, claimant or creditor would otherwise be entitled to receive pursuant to any of the Plans and (iii) unless the Court shall otherwise direct, any such holder of securities, claimant or creditor shall be entitled to receive a distribution of cash or securities in respect of claims in a class only at such time as all claims of any such holder of securities, claimant or creditor in such class under any of the Plans have been approved, acknowledged or allowed and all issues relating to all claims of such holder of securities, claimant or creditor in such class have been resolved (except that nothing in this Section 4.03(d) (iii) shall preclude a distribution to a creditor in Classes E or I if the only unresolved issues in respect of the claims of any such creditor are issues relating to the liability for or the amount of property taxes for the year 1976 or any portion thereof arising from uncertainty created by the conveyance of property as of April 1, 1976, pursuant to the

Regional Rail Reorganization Act of 1973, as amended, or to a creditor whose only unliquidated claim arises from the rejection of an executory contract approved by Order No. 3688).

(e) As described in Section 10.3 of the PCTC Plan and Sections 8.2 of the Secondary Debtor Plans and taking into consideration the estimated aggregate amount of claims in Class M which have not been liquidated as of the Consummation Date, Common Stock shall be issued as of the Consummation Date to claimants in Class M under the PCTC Plan whose claims have been liquidated and to those holders of stock of Secondary Debtors, as shown in Exhibit 6 of the PCTC Plan, who are to receive Common Stock from that portion of the Common Stock allocated to unsecured creditors in Class M on the basis of one share for each $96 of claim amount. The Common Stock allocated to such estimated but unliquidated claims will be retained by the Registrar. As unliquidated claims are finally liquidated, by adjudication or otherwise, the Reorganized Company will instruct the Exchange Agent to request from the Registrar and to deliver to the claimants whose claims have been liquidated the shares of Common Stock to which they are entitled, along with the appropriate principal amount of Certificates of Beneficial Interest. To the extent that the actual aggregate amount of such liquidated claims is less than the estimated aggregate amount, the excess withheld shares of Common Stock shall be distributed or allocated to all claimants whose claims have been previously liquidated or of stock of Secondary Debtors referred to above. Such supplemental distributions shall be made at such times and in such manner as the Board of Directors of the Reorganized Company may determine.

(f) Interest which was due and payable on June 30, 1978 in respect of Series D Secured Notes, and interest from July 1, 1978 through Consummation Date calculated in accord with Section 5.5 of the Plan on the amount of interest due and payable on June 30, 1978 in respect of Series D Secured Notes, shall be paid by the Exchange Agent at the same time that the Exchange Agent makes the distribution of cash and Series D Secured Notes to any claimant pursuant to Section 4.03(d) above. Any distribution of new securities shall include any interest or dividends which became due and payable in respect of such new securities prior to the date upon which such distribution occurs.

(g) The issuance, transfer and exchange of new securities and the execution, delivery, filing and recording of documents, as authorized and provided in this Order and the documents herein approved, are all pursuant to the Plans, which have been confirmed by this Court in accordance with the provisions of Section 77 of the Bankruptcy Act and Section 601 of the Regional Rail Reorganization Act of 1973 and are for the purposes of carrying out and putting into effect such Plans. No further authorization or approval by any court or administrative, regulatory or other body, including without limitation the approval of the Interstate Commerce Commission pursuant to Section 20a of the Interstate Commerce Act, 49 U.S.C. 20a, is required for such purposes or for the validation of any securities issued and actions taken pursuant to this Order.

4.04 *Termination of Right to Receive Cash or New Securities Under the Plans.* The rights of all security holders, creditors and claimants to receive cash and/or new securities, upon the surrender of old securities or execution of release and satisfaction forms, as provided in the Plans and this Order,

shall terminate five years after the Consummation Date or, as to claims asserted as of the Consummation Date but not approved, acknowledged or allowed until after the fourth anniversary of the Consummation Date, one year after the date of such approval, acknowledgement or allowance. Security holders, creditors and claimants who do not surrender their old securities or execute release and satisfaction forms within such period shall not be entitled to participate under the Plans; provided, however, that nothing in this Section 4.04 will affect the right of claimants in Class M and the holders of Secondary Debtor stock referred to in Section 4.03(e) above to receive supplemental distributions of Common Stock as provided in Section 4.03(e) above; and provided further that nothing in this Section 4.04 will affect the right of any claimant or creditor to receive a distribution of cash and/or new securities if some but not all of the claims of any such claimant or creditor within each class under any of the Plans have been approved, acknowledged or allowed, as provided in Section 4.03(d) above, as of the date or on which such right would otherwise terminate pursuant to this Section 4.04. Any such cash and new securities issued but not distributed and any interest, dividends or distributions thereon not distributed within such period shall become the sole and exclusive property of the Reorganized Company and all shares of stock shall become treasury shares, free and clear of any right, title and interest other than that of the Reorganized Company, the escheat or abandonment of property laws of any state to the contrary notwithstanding. Not less than 60 days and not more than 90 days before the fifth anniversary of the Consummation Date, the Reorganized Company shall cause to be published a notice that the right to receive cash and new securities as provided in the Plans shall terminate, subject to the exception

referred to above for claims which are approved, acknowledged or allowed after the fourth anniversary of the Consummation Date. Such notice shall be published at least once in each of the newspapers named in Section 4.02 above or, if any such newspaper is no longer published, in another newspaper in the same city or area.

V. *EXECUTION AND RECORDATION OF DOCUMENTS*

5.01. *Execution and Delivery of Documents and Pledging of Collateral.* The PCTC Trustees or any of them, or such persons as the PCTC Trustees may be resolution designate, and the Secondary Debtor Trustees, or such person or persons as any of them may by resolution designate, are hereby authorized and directed to execute and deliver or to have executed and delivered the documents approved in Section 1.01 above to which they are parties, except that the Amended and Restated Articles of Incorporation of the Reorganized Company shall be executed and filed as provided in Section 6.01 below, and to execute and deliver or to have executed and delivered all such other conveyance documents, bills of sale, assignments and other instruments as may be necessary and proper to convey, assign and transfer all of the right, title and interest of the Debtors and the Trustees of the properties of the Debtors in and to the properties to be vested in the Reorganized Company, Owasco and the Reorganized Secondary Debtors as required by Article III above. Whether executed before or after the Consummation Date, each of said instruments shall be effective as of the Consummation Date. The Reorganized Company shall, on or as soon after the Consummation Date as is reasonably practicable, execute and deliver or have executed and delivered the documents approved in Section 1.01 above to which it is a party and (i) deliver in pledge to

the trustee under the Indenture of Mortgage and Deed of Trust securing the Trustees' Certificates due 1986 the capital stock of Pennco and Cleveland Technical Center, Inc and (ii) deliver in pledge to the trustee under the Indenture of Mortgage and Deed of Trust securing the Series A General Mortgage Bonds all other stock and securities vested in or owned by the Reorganized Company and listed in the granting clauses thereof. The Indentures for the Trustees' Certificates due 1986, Series B Notes, Series C Notes, Series D Notes, Series A General Mortgage Bonds and Series B General Mortgage Bonds and the Valuation Case Proceeds Trust Agreement shall be and become effective as of the Consummation Date, irrespective of the dates of such instruments or the actual dates of execution and delivery thereof. The liens of such Indentures and Trust Agreement, in the order of their priority, shall attach as of the Consummation Date and become effective thereafter against, and be prior to, any other lien attaching to any property subject to the liens of such Indentures and Trust Agreement in the interval between the Consummation Date and the recording or filing for record of such Indentures and Trust Agreement or the deposit and pledge of collateral thereunder, unless any such other lien so attaching would be prior to the lien of such Indentures and Trust Agreement if they were already recorded or filed and if the pledges thereunder were already made.

5.02. *Recording and Filing Documents.*

(a) The Reorganized Company is authorized and directed to file or record, as soon as possible but not later than 60 days after the Consummation Date,

(i) in each of the jurisdictions in which the Reorganized Company, Owasco or any of the Reorganized

Secondary Debtors owns real property, a copy of this Order and a deed or deeds, substantially in the form approved in Section 1.01(z) above, conveying such property from the respective Trustees to the Reorganized Company, Owasco or the Reorganized Secondary Debtors, as the case may be;

(ii) in each of the jurisdictions in which the Reorganized Company, Owasco or any Reorganized Secondary Debtor owns real property and in which any indenture or mortgage of the Debtor or any of the Secondary Debtors or any predecessor released and discharged pursuant to Section 3.08 above was previously recorded, a copy of this Order and an instrument of satisfaction, substantially in the form approved in Section 1.01(x) above, relating to each such indenture or mortgage; provided, however, that this Order need not be filed and recorded more than once in any such jurisdiction;

(iii) in each of the jurisdictions in which the Reorganized Company owns real property which is to be subject to the liens of the Indentures securing the new securities of the Reorganized Company, the various Indentures approved in Sections 1.01(n)-(t) above, except that such Indentures need not be filed and recorded in any jurisdiction in which the fee for filing and recording would exceed an amount equal to 1% of the aggregate value, as estimated by the Reorganized Company, of the mortgaged real property of the Reorganized Company located within such jurisdiction; and

(iv) in each of the jurisdictions necessary in order fully to perfect its lien, the Valuation Case Proceeds Trust Agreement and an appropriate financing statement.

(b) The recording officer of each jurisdiction referred to in Section 5.02(a) above shall, upon presentation of a duly executed counterpart thereof, accept for recording any or all of the documents referred to in Section 5.02(a) above.

(c) If the recordation or taxation laws or regulations of any jurisdiction require that the deeds or other documents referred to in Section 5.02(a) above contain real property descriptions which are more specific than or otherwise differ from those contained in such deeds or other documents, such person or persons as the PCTC Trustees or Secondary Debtor Trustees may by resolution designate are authorized and directed to execute and deliver and the Reorganized Company is authorized and directed to file and record, as soon after the Consummation Date as is reasonably practicable, amendatory or supplemental deeds or other documents which comply with such laws or regulations.

VI. *ONGOING OPERATION OF THE REORGANIZED COMPANY*

6.01. *Filing of Amended and Restated Articles of Incorporation.* The Amended and Restated Articles of Incorporation of the Reorganized Company, in the form approved in Section 1.01 above, and the effectuation of such amendments are authorized by the PCTC Plan and are necessary and proper to put the Plans into effect and are hereby approved and authorized. The PCTC Trustees are hereby authorized and directed to file with the Secretary of the Commonwealth of Pennsylvania, pursuant to this Order, Articles of Amendment amending the Articles of Incorporation of the Debtor as provided in such Amended and Restated Articles of Incorporation. Such Articles of Amendment may be executed by the PCTC Trustees, or their

designee, or if requested by them by officers of the Debtor, and shall be effective as of the Consummation Date. After filing of the Articles of Amendment as directed above, the Articles of Incorporation of Penn Central Transportation Company shall, for all purposes, be deemed amended in accordance with said Articles of Amendment.

6.02. *Qualification to do Business in Other States.* Prior to the Consummation Date, the PCTC Trustees are authorized and directed, on behalf of the Reorganized Company, to execute and acknowledge appropriate certificates, or amendatory certificates in respect of the various certificates presently qualifying the Debtor, to do business in the following jurisdictions in conformance with the Amended and Restated Articles of Incorporation of the Reorganized Company and in accordance with the provisions of the applicable statutes in the respective jurisdictions and to file such certificates or amendatory certificates, as the case may be, and other appropriate documents with the proper authority of the respective jurisdictions: Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, New York, New Jersey, Ohio, Rhode Island, Virginia and West Virginia. After the filing of such certificates or amendatory certificates, the Reorganized Company shall be qualified to do business in such jurisdictions in accordance with the provisions of such certificates or amendatory certificates.

6.03. *Assumed Obligations.* The claims of creditors, claimants and stockholders in respect of obligations of any of the Debtors or Trustees of the properties of the Debtors will be satisfied as provided in the Plans, subject, however, to the provisions of this Order relating to the payment or satisfaction of such claims. Any timely-filed claim, including claims

in respect of disaffirmed executory contracts, the claims of any of the non-bankrupt leased lines or its public security holders against any of the Debtors or Trustees and contingent claims in respect of guarantees by any of the Debtors of bonds of non-subsidiary companies, against any of the Debtors or their Trustees included in a class provided for in the Plans but not liquidated in amount, settled, determined, classified, approved, acknowledged, allowed or adjudicated to be valid until after the Consummation Date will be satisfied pursuant to the Plans in the same manner as if such claim had been so adjudicated or otherwise liquidated prior to the Consummation Date. Without limiting the generality of the foregoing, the following claims and obligations shall be assumed and satisfied by the Reorganized Company in the manner described:

(a) As of the Consummation Date, the Reorganized Company shall assume the obligations of the PCTC Trustees under the Guaranty Agreement, as amended by the Amendment approved in Section 1.01 above, and the obligation to pay interest on and principal of the Trustees' Certificates due 1986 in accordance with their terms.

(b) Insofar as such claims are not satisfied prior to the Consummation Date, the Reorganized Company shall pay in cash, on the Consummation Date or as soon as practicable thereafter, all claims in respect of the following:

(i) costs and expenses of reorganization of the Debtors allowed by this Court in accordance with the provisions of Sections 77(c)(2) and 77(c)(12) of the Bankruptcy Act;

(ii) liquidated pre-bankruptcy personal injury and wrongful death claims as provided in Order No. 2921 of the PCTC proceedings;

(iii) general unsecured pre-bankruptcy period claims liquidated at $1,000 or less per claim and included in Class N under the PCTC Plan; and

(iv) claims of secured creditors in Class J under the PCTC Plan or any of the Secondary Debtor Plans for interest due prior to June 21, 1970, and unpaid, the total amount of which is or is voluntarily reduced to less than $100 per claim;

provided, however, that (A) the obligation of the Reorganized Company to pay such claims shall in each case be subject to any and all applicable statutes of limitation, and (B) the Reorganized Company may contest the amount and validity of any claim or obligation described in this Section 6.03(b).

(c) The Reorganized Company is authorized and directed to pay such amounts (i) as may be called for by drafts, checks or vouchers signed or bills approved within 90 days prior to the Consummation Date by the Trustees of the properties of any of the Debtors or any person thereunto authorized by resolution or action-in-writing of the Trustees, for goods or services provided before the Consummation Date or during a period commencing before the Consummation Date and (ii) as may be necessary for obligations which accrued prior to the Consummation Date for goods or services approved or authorized by the Trustees of the properties of any of the Debtors or any person thereunto authorized by resolution or action-in-writing of the Trustees.

(d) The Reorganized Company is authorized and directed to pay expenses incurred by the Trustees after the Consummation Date in their performance of any of the duties imposed by this Order or by any other order of the Court and to provide staff and other support services required by the Trustees in the performance of such duties.

(e) As of the Consummation Date, the Board of Directors of the Reorganized Company is authorized and directed, by adoption of a resolution in the form approved in Section 1.01 above, to indemnify from certain liabilities and expenses the Trustees of the properties of the Debtors, their officers and employees and other specified persons serving at their request or whom they have agreed to indemnify.

(f) The Reorganized Company is authorized and directed to assume the rights and obligations of the PCTC Trustees under the lease of the properties of The New York and Harlem Railroad Company dated April 1, 1873, as amended, and to execute, deliver and comply with the instruments approved in Section 1.01(w) above.

(g) The Reorganized Company, each of the Reorganized Secondary Debtors and Owasco, with respect to property of the Debtor located in the State of New York and conveyed to Owasco, are authorized and directed to assume each executory contract of any of the Debtors recommended for affirmance in the "Report of the PCTC Trustees and the Trustees of the Secondary Debtors With Respect to Pre-Bankruptcy Executory Contracts", Document No. 14122, as amended pursuant to Order No. 3275. Subject to paragraph 4 of Order No. 3455, all pre-bankruptcy executory contracts not so assumed are disaffirmed and rejected, effective as of the Consummation Date but relating back to the respective dates of filing by the Debtors of petitions for reorganization, and the Reorganized Company and the Reorganized Secondary Debtors shall have no responsibility to carry out the terms of such contracts, provided, however, that the affirmance or disaffirmance of leases of the non-bankrupt leased lines is deferred without prejudice to taking such action in connection with the resolution or adjudication of issues between the Trustees and the non-bankrupt leased lines relating to such affirmance or disaffirmance.

(h) As of the Consummation Date, the Reorganized Company, Owasco and each of the Reorganized Secondary Debtors, as the case may be, are authorized and directed to assume and comply with all agreements of any of the Trustees, including without limitation any agreements for the sale of property which have been approved by the Trustees or their designees and which, but for the occurrence of the Consummation Date, would have been consummated by the Trustees pursuant to a final order specifically authorizing such sale or a general order authorizing sales if the consideration is less than a specified amount.

(i) The Reorganized Company is authorized and directed to continue the life and medical insurance programs for non-agreement employees of the Debtor who retired prior to April 1, 1976.

(j) The Reorganized Company is authorized and directed to make the remaining payments due to participants in the Contingent Compensation Plan of the Debtor under the formula approved by the Court in Order No. 1087, as amended by any further orders of the Court.

(k) The Reorganized Company is authorized and directed to assume and to satisfy and pay, in a manner and amount agreed upon by the PCTC Trustees or, following consummation of the Plan, the Reorganized Company and the United States of America any claims of the United States for pre-bankruptcy period federal income taxes which have not been satisfied prior to the Consummation Date. If no agreement as to the amount due and method of payment is reached, the Reorganized Company is authorized and directed to assume and to satisfy and pay, an amount equal to the adjudicated liability to the extent it exceeds the taxpayer's claims for re-

fund or other offsets determined by adjudication or agreement to be valid, by tendering in cash the greater of $2 million (or such lesser amount as may be determined by adjudication to be due) or 20% of the excess finally adjudicated (said cash amount is not to exceed $5 million) and Series B Notes having a sufficient face value to satisfy the remainder of the liability. The cash payment and the issuance of Series B Notes as described hereto will be made within 30 days following the consummation of the Plan or the date of final adjudication of the amount due, whichever is later.

(l) The Reorganized Company is authorized and directed to assume and satisfy any tax claims of state and local taxing authorities against any of the Debtors or Trustees which have accrued subsequent to December 31, 1976, and which remain unpaid as of the Consummation Date, provided, however, that the Reorganized Company shall not be precluded from contesting the amount or validity of any such claims.

6.04. *Pending Litigation.* The Reorganized Company or any of the Reorganized Secondary Debtors, as the case may be, shall be substituted at its own cost and expense as a party in lieu of the PCTC Trustees or the Secondary Debtor Trustees in any and all litigation, including the Valuation Case, as that term is defined in the Plan, to which the PCTC Trustees or the Secondary Debtor Trustees may be parties on the Consummation Date and may continue such litigation in the name of the Reorganized Company or the respective Reorganized Secondary Debtors.

6.05. *Personnel Arrangements.* The PCTC Trustees or the Reorganized Company are authorized and directed to offer, on behalf of the Reorganized Company, employment with the

Reorganized Company or its subsidiaries to the employees who are on the staff of the PCTC Trustees on the date of this Order without interruption by reason of the transfers of property or other transactions pursuant to the Plans and this Order. The Reorganized Company will provide the employment so offered and will honor all contracts and agreements of employment in effect immediately prior to the Consummation Date on the terms contained therein. The Reorganized Company is directed to assume and continue the presently-existing undertakings of the PCTC Trustees to provide benefits to present and former employees, including without limitation (i) retirement benefits, (ii) group medical coverage to employees after retirement and (iii) post-retirement life insurance to employees in the amount provided by the option heretofore elected.

6.06. *Listing and Registration of Securities.* The PCTC Trustees or the Reorganized Company are authorized, on behalf of the Reorganized Company, to apply to the New York Stock Exchange, or to any other securities exchange, for the listing of all or any of the issues of securities to be issued by the Reorganized Company pursuant to the Plan and orders of the Court, to execute a listing agreement, listing fee agreement and such other documents as may be necessary for such purpose and to pay the listing fees required for such listing. The PCTC Trustees are authorized and directed to file with the Securities and Exchange Commission under the Securities Exchange Act of 1934, and with any other securities commissions or authorities, such other documents, and to pay such fees, as may be required to comply with applicable law governing the listing, issuance or distribution of new securities by the Reorganized Company.

VII. *FURTHER PROCEEDINGS*

7.01. *Implementation of Plans.* Under and subject to the supervision and control of this Court and pursuant to the terms of this Order and the Plans, the Reorganized Company is authorized and directed, as promptly as possible, to effectuate the consummation of the Plans, the laws of any state or the decision or order of any state authority to the contrary notwithstanding. To the extent that the provisions of any prior orders of this Court may be inconsistent with the provisions of this Order or the Plans or the effectuation thereof, such provisions of such prior orders are superseded, but any action taken pursuant to or reliance upon any such superseded provision shall not be affected by this Section 7.01.

7.02. *Injunction.* All persons, firms, governmental entities and corporations, wherever situated, located or domiciled, are hereby permanently restrained and enjoined from instituting, prosecuting or pursuing, or attempting to institute, prosecute or pursue, any suits or proceedings, at law or in equity or otherwise, against the Reorganized Company, Owasco or the Reorganized Secondary Debtors or their successors or assigns or against any of the assets or property of the Reorganized Company, Owasco or the Reorganized Secondary Debtors or their successors or assigns, directly or indirectly, on account of or based upon any right, claim or interest of any kind or nature whatsoever which any such person, firm, governmental entity or corporation may have in, to or against any of the Debtors, the Trustees of the properties of the Debtors or any of their assets or properties, and from interfering with, attaching, garnishing, levying upon, enforcing liens against or upon, or in any manner whatsoever disturbing, any portion of the property, real, personal or

mixed, of any kind or character, on or at any time after the Consummation Date in the possession of the Reorganized Company, Owasco or the Reorganized Secondary Debtors, and from interfering with or taking steps to interfere with the Reorganized Company, Owasco or the Reorganized Secondary Debtors, their officers and agents, or the operation of the properties or the conduct of the business of the Reorganized Company, Owasco or the Reorganized Secondary Debtors, by reason of or on account of any obligation or obligations incurred by any of the Debtors or any of their Trustees in these proceedings, except the obligations imposed on the Reorganized Company, Owasco or the Reorganized Secondary Debtors by the Plans and this Order or reserved for resolution or adjudication by this Order. All persons, firms, governmental entities and corporations, wherever situated, located or domiciled, are hereby restrained and enjoined from instituting, prosecuting or pursuing or attempting to institute, prosecute or pursue any suit or proceedings, at law or in equity or otherwise, against any of the Debtors or any of their assets or property, directly or indirectly, except such suits or proceedings as may be for the purpose of carrying out this Order or consummating the Plans. Nothing in this Section 7.02 should be construed, interpreted or applied (a) to limit the right of any person, firm, governmental entity or corporation, wherever situated, located or domiciled, from instituting, prosecuting or pursuing any suit or proceedings, at law or equity, or otherwise against any of the Debtors, or any of their assets or property, directly or indirectly, which is within the original and exclusive jurisdiction of the Special Court established pursuant to Section 209(b) of the Regional Rail Reorganization Act of 1973, as amended, or (b) to prohibit any suits or proceedings by the

Canada Southern Railway Company in Canada, previously authorized by this Court, against any Trustees or Debtors or their properties or the Reorganized Company or Reorganized Secondary Debtors as successors, respectively, of the Debtor and the Secondary Debtors. Any other provision of this Order to the contrary notwithstanding, the consummation of the Plan and any action taken pursuant to this Order shall not prejudice the rights of appellants to prosecute pending appeals or appeals which may be taken from the confirmation order or this Order.

7.03. *Discontinuance of Litigation.* As promptly as possible after the Consummation Date, the Trustee of the property of The Pittsburgh, Youngstown and Ashtabula Railway Company and Goldman, Sachs and Company shall withdraw and discontinue with prejudice certain litigation (*Pittsburgh, Youngstown and Ashtabula Railway Company v. Pennsylvania Company*, Civil Action No. 75-1417 in the U.S.D.C. for the Eastern District of Pennsylvania; and *Goldman, Sachs & Co. v. Penn Central Company, et al.*, M.D.L. Docket No. 56 in the U.S.D.C. for the Eastern District of Pennsylvania, referred to in "Stipulation Between Trustees and Goldman, Sachs & Co.", Doc. No. 14684, which was approved by the Court on December 2, 1977) which each of them has instituted against Pennco.

7.04. *Reservation of Jurisdiction.* From and after the Consummation Date, the Court hereby reserves jurisdiction, which shall be exclusive to the extent that under applicable law such jurisdiction is presently exclusive:

(a) To consider and approve the final report of the PCTC Trustees as provided in Section 7.05 below;

(b) To the extent not previously determined by this Court, to fix the amounts of allowances of compensation for services heretofore or hereafter rendered and reimbursement of expenses heretofore or hereafter incurred under Sections 77(c)(2) and 77(c)(12) of the Bankruptcy Act in connection with these proceedings or the Plans or the execution of this Order;

(c) To consider and act in the matter of any proof of claim against any of the Debtors or claim for administration expenses against any of the Debtors or Trustees, including without limitation action to deny any such claims, to adjudicate the amount or validity thereof, to classify such claims, to provide for the satisfaction of such claims and to approve settlements of any such claims;

(d) To approve and authorize the implementation of agreements for the satisfaction of any claims of any of the non-bankrupt leased lines or its public security holders or, alternatively, to adjudicate claims between any of the non-bankrupt leased lines or its public security holders and the Debtors or the Trustees and to classify and provide for the satisfaction of any liquidated claims of any such non-bankrupt leased lines or its public security holders;

(e) To consider and act in respect of any claim of any of the Debtors or Trustees, in respect of any petition or matter pending before the Court as of the Consummation Date or in respect of any agreement or matter to which any of the Trustees or Debtors is a party, as to which the Court presently has asserted jurisdiction and which has not been adjudicated, discharged, resolved or terminated as of the Consummation Date, including without limitation condemnation awards by state courts and the agency agreement established pursuant to

Order No. 2297 in the Penn Central proceedings and Section 211(h) of the Regional Rail Reorganization Act;

(f) To consider and act in the matter of (i) any claim or action against any current or former Trustee of the property of any of the Debtors, in his personal capacity, including claims or actions filed pursuant to Section 3.10 above, or actions against the officers or employees of any of the Trustees or persons who have served as directors at their request, arising out of any act or omission of any such person in respect of the administration of the Debtors during their respective reorganization proceedings, and (ii) any application of such Trustees, officers or employees or persons who served as directors for indemnification from liabilities and expenses in respect of such actions, or any other actions in which such individuals are personally involved, pursuant to the Indemnification Resolution approved in Section 1.01 above and adopted by the Reorganized Company pursuant to Section 6.03(e) above;

(g) To consider and act on any application for instructions with respect to the distribution of funds or the issuance of securities in connection with this Order and the Plans, to construe this Order and the Plans as to matters which may require interpretation or construction and which are not dealt with in this Order and to consider and act upon any matter as to which jurisdiction is reserved by this Order;

(h) To consider and take appropriate action with respect to the matters referred to in Section 7.02 above, including action to enforce the injunctive provisions of that Section; and

(i) To take such further action and to enter such further orders as may be necessary to cure any defect, supply any omission, reconcile any inconsistency and put into effect and carry out this Order and the Plans and all other orders relative thereto entered by this Court and to prevent interferences therewith;

(j) To the same extent that the Court now possesses jurisdiction, to adjudicate claims by any or all of the public security holders of Mahoning Coal Railroad Company (Mahoning) to have the Court direct the PCTC Trustees, as majority stockholder of Mahoning, to have Mahoning distribute to its minority stockholders their pro rata share of (i) the liquid assets of Mahoning and (ii) any net earnings collected by the Debtor as the result of its operations of the rail properties of Mahoning during bankruptcy; and to classify and provide for the satisfaction of any such claims, provided that this reservation of jurisdiction is without prejudice to the right of any party to object to any such relief on jurisdictional, procedural or other grounds;

provided, however, that nothing in this Section 7.04 shall be construed as a reservation of jurisdiction to change the terms of the Plans as confirmed or any of the rights vested thereunder or any of the rights of the holders of the new securities.

(k) To approve the Series A and E Note Indentures which are to be filed by the PCTC Trustees or, if appropriate, the Company on or before April 1, 1979.

7.05 *Additional Reports.* Within 30 days after the Consummation Date, the PCTC Trustees shall file with the Court a final report consisting of a statement of revenues and expenses covering the period from the last such report through the Consummation Date and a balance sheet as of the Consummation Date. Within 180 days after the Consummation Date, the Reorganized Company shall file with the Court a report stating the progress made in the consummation of the Plans and summarizing the claims or interests which have not been surrendered or released in accordance with the Plans and this Order.

7.06. *Termination of Proceedings and Final Decree.* Except as provided in Section 7.04 above and in Section 7.07 below, all jurisdiction of this Court in or by reason of these proceedings shall be terminated and these proceedings shall be closed effective as of the Consummation Date.

7.07. *Further Reservation of Jurisdiction.*

(a) From and after the Consummation Date, the Court also hereby reserves jurisdiction to direct the distribution of whatever amounts of cash, or securities of the Reorganized Company, may be necessary in the event the claims of appellants are sustained in whole or in part on appeal or remand after appeal. The Court directs the Trustees to submit within seven days such amendments to the consummation documents which have been filed with the Court as are necessary and appropriate to conform them to this further reservation of jurisdiction.

(b) Notwithstanding anything to the contrary herein, the Court suspends the effectiveness of the discharge of such bonds and the cancellation of the lien of Irving Trust Company as indenture trustee for the New York Central Collateral Trust Bonds 6% due 1990 and the Penn Central Collateral Trust Bonds 6½% due 1993 pending further order of the Court upon disposition of the claim of Irving Trust Company on appeal, provided that pending such appeals (i) all collateral other than securities of Pittsburgh and Lake Erie Railroad Company and escrowed dividends shall be released by Irving Trust Company as trustee under such indentures (it

being understood that Irving Trust Company's appeal from paragraph No. 3 of Order No. 3503 shall not be prejudiced by anything contained herein), (ii) interest on such bonds shall not be payable to the bondholders pending the results of the appeal and future dividends on pledged securities shall be held in escrow pending the results of the appeal. The Court further reserves jurisdiction to authorize and direct the Reorganized Company to assume the obligation of such bonds in substitution for the cash, Series A Bonds, Series A Preference Stock and New Common Stock provided to such bondholders by the Plan, but only to the extent that the said claims of Irving Trust Company as indenture trustee for such assumption of such bonds are sustained on appeal or remand after appeal. The Court directs the Trustees to submit within seven days such amendments to the consummation documents which have been filed with the Court as are necessary and appropriate to conform them to the provisions of this subparagraph (b).

(c) This Consummation Order and any consummation of the Plan of Reorganization are without prejudice to or impairment of the rights or standing of such indenture trustees and other appellants to continue to prosecute their claims on appeal, it being the intention of the provisions of this subparagraph (c) that the indenture trustees and other appellants shall have the same substantive rights to said appeals following consummation as they have prior to consummation.

(d) The Court further directs that unless otherwise ordered no distributions to any bondholder of a series represented by the appealing indenture trustees will be made before December 15, 1978.

JOHN P. FULLAM,
United States District Judge.

Confirmation Order, August 17, 1978

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In the Matter of PENN CENTRAL TRANSPORTATION COMPANY, *Debtor* ORDER NO. 3707	In Proceedings for the Reorganization of a Railroad No. 70-347
THE UNITED NEW JERSEY RAILROAD & CANAL COMPANY, ORDER NO. 210	No. 70-347-A
BEECH CREEK RAILROAD COMPANY, ORDER NO. 133	No. 70-347-B
THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, ORDER NO. 215	No. 70-347-C
THE CLEVELAND AND PITTSBURGH RAILROAD COMPANY, ORDER NO. 161	No. 70-347-D
THE CONNECTING RAILWAY COMPANY, ORDER NO. 175	No. 70-347-E
THE DELAWARE RAILROAD COMPANY, ORDER NO. 156	No. 70-347-F
ERIE AND PITTSBURGH RAILROAD COMPANY, ORDER NO. 137	No. 70-347-G
THE MICHIGAN CENTRAL RAILROAD COMPANY, ORDER NO. 149	No. 70-347-H
THE NORTHERN CENTRAL RAILWAY COMPANY, ORDER NO. 161	No. 70-347-I

PENNDEL COMPANY, } No. 70-347-J
ORDER NO. 157

THE PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY, } No. 70-347-K
ORDER NO. 274

THE PHILADELPHIA AND TRENTON RAIL ROAD COMPANY, } No. 70-347-L
ORDER NO. 142

THE PITTSBURGH, YOUNGSTOWN & ASHTABULA RAILWAY COMPANY, } No. 70-347-M
ORDER NO. 136

PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY COMPANY, } No. 70-347-N
ORDER NO. 150

UNION RAILROAD COMPANY OF BALTIMORE, } No. 70-347-O
Secondary Debtors
ORDER NO. 137

CONFIRMATION ORDER

AND NOW, this 17th day of August, 1978, upon consideration of the PETITION OF TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR, FOR ENTRY OF ORDERS CONFIRMING AND AUTHORIZING CONSUMMATION OF PLANS OF REORGANIZATION (Petition), the affidavits in respect thereto, the answers and responses thereto and the entire record in these proceedings, and after a duly noticed hearing on the Petition, it appearing that:

1. This Court has exclusive jurisdiction of the Debtor and each of the Secondary Debtors (the Debtor and the Secondary Debtors to be referred to collectively as the Debtors) and their properties, wherever located.

2. This Court has exclusive jurisdiction over all claims, rights, demands, interests, liens and encumbrances of every kind and character of creditors and stockholders of, or claimants against, the Debtors, the Penn Central Trustees, the Secondary Debtor Trustees or their properties, whether or not properly or timely filed and whether or not approved in these proceedings.

3. The Plan of Reorganization for Penn Central Transportation Company (PCTC Plan) and the Plans of Reorganization for the respective Secondary Debtors (Secondary Debtor Plans) (to be referred to collectively as the Plan) were approved by this Court pursuant to Section 77(e) of the Bankruptcy Act on March 17, 1978, by the following orders:

Penn Central Transportation Company (PCTC)	No. 70-347	Order No. 3455
The United New Jersey Railroad & Canal Company (UNJ)	No. 70-347-A	Order No. 187
Beech Creek Railroad Company (Beech Creek)	No. 70-347-B	Order No. 115
The Cleveland, Cincinnati, Chicago & St. Louis Railway Company (CCC&StL)	No. 70-347-C	Order No. 195
The Cleveland and Pittsburgh Railroad Company (C&P)	No. 70-347-D	Order No. 139
The Connecting Railway Company (Connecting)	No. 70-347-E	Order No. 155
The Delaware Railroad Company (Delaware)	No. 70-347-F	Order No. 136
Erie and Pittsburgh Railroad Company (E&P)	No. 70-347-G	Order No. 119
The Michigan Central Railroad Company (MC)	No. 70-347-H	Order No. 131

The Northern Central Railway Company (NC)	No. 70-347-I	Order No. 145
Penndel Company (Penndel)	No. 70-347-J	Order No. 139
The Philadelphia, Baltimore & Washington Railroad Company (PB&W)	No. 70-347-K	Order No. 243
The Philadelphia and Trenton Rail Road Company (P&T)	No. 70-347-L	Order No. 126
The Pittsburgh, Youngstown & Ashtabula Railway Company (PY&A)	No. 70-347-M	Order No. 121
Pittsburgh, Fort Wayne & Chicago Railway Company (PFW&C)	No. 70-347-N	Order No. 132
Union Railroad Company of Baltimore (UofBalt.)	No. 70-347-O	Order No. 121

The Court makes the following FINDINGS:

1. Pursuant to and in accordance with paragraph 1 of Order No. 3456 in the Penn Central proceedings and corresponding orders in each of the Secondary Debtor proceedings (to be referred to collectively as Order No. 3456), due notice of the approval of the Plan was given by publication.

2. The Plan was duly submitted by United States Trust Company of New York (U.S. Trust) to the creditors, claimants and stockholders of each class entitled to vote on the Plan, and the form and manner of such submission complied fully with the provisions of Order No. 3456 and satisfied all requirements of law.

3. Submission of the Plan to creditors, claimants or stockholders in Classes A, B, C and N of the PCTC Plan, Classes A and N of the respective Secondary Debtor Plans, Classes J and O of the MC Plan and Class J of the Penndel Plan was not

required because the claims of such creditors, claimants or stockholders either will be paid in cash pursuant to the Plan or will not be adversely and materially affected by the Plan. There were no creditors, claimants or stockholders entitled to vote in, and hence the Plan was not submitted to, the following classes: Classes F, H, K and L of the PCTC Plan; Classes B, C, D, F, G, H, K, L and M of the respective Secondary Debtor Plans; Class J of the Beech Creek, Delaware, E&P, P&T, PFW&C and UofBalt. Plans; Class O of the Connecting, Penndel, PB&W and UofBalt. Plans; and Class 0-2 of the PY&A Plan.

4. The report of U.S. Trust with respect to the results of the voting on the Plan (Document No. 15798) was duly filed with this Court, in accordance with Order No. 3456, on May 25, 1978, and supplemented (Document No. 15870) on June 8, 1978 (Voting Report). The Voting Report was served on all persons customarily notified of hearings in these proceedings and upon all persons on the Order No. 3013 Service List.

5. With the exceptions and qualifications referred to in findings 6, 7 and 8 below, the Plan has been accepted in writing by or on behalf of creditors, claimants and stockholders of each class to which submission was required under Section 77(e) of the Bankruptcy Act holding more than two-thirds in amount of the allowed claims or shares of stock validly voting in each such class. Such acceptances of the Plan, as reported in the Voting Report, have been made and procured in good faith and not by any means forbidden by law.

6. Two ballots were cast in Class G of the Penn Central Plan. Neither of the claimants who voted had an acknowledged or liquidated claim as of May 12, 1978, the last

day for voting. Pursuant to settlements approved by this Court with Amtrak (Order No. 3694) and Conrail (Order No. 3695) both Amtrak and Conrail are accorded liquidated Class G Claims and both are required under the settlements to vote in favor of the Plan. Pending formal notification of their vote, the Class G claimants under the Penn Central Plan are deemed to have voted to accept the Plan.

7. No ballots were validly cast in Classes 0-3 or 0-4 of the PFW&C Plan.

8. The Plan was accepted by holders of less than two-thirds of the stock validly voted in Class 0-2 of the PFW&C Plan.

9. The Plan makes adequate provision for fair and equitable treatment for the interests and claims of the stockholders in Class 0-2 of the PFW&C Plan who rejected the Plan. The rejection of the Plan by these stockholders is not reasonably justified in light of their respective rights and interests and all the relevant facts. The Plan makes adequate provision for fair and equitable treatment for the interests of stockholders in Classes 0-3 and 0-4 of the PFW&C Plan. The absence of valid votes or of allowed claims in such classes does not constitute a failure of acceptance of the Plan by such classes within the meaning of Section 77(e) of the Bankruptcy Act. Even assuming that the absence of valid votes or of allowed claims in a class should be determined to be a rejection of the Plan, such rejection is not reasonably justified in light of the respective rights and interests of creditors and stockholders in such classes and all the relevant facts. The Plan conforms to the requirements of clauses (1) through (3) of the first paragraph of Section 77(e) of the Bankruptcy Act.

10. Counsel for the United States has stated that the provisions of the PCTC Plan in respect of the claims of the United States for pre-bankruptcy federal income taxes and custom duties have been accepted by the United States, and with respect to the liquidation and satisfaction of certain pre-bankruptcy tax claims the Trustees and the United States have arrived at a settlement which will be presented shortly to the Court for approval.

WHEREFORE, it is hereby ORDERED that:

1. The Plan is CONFIRMED, but pending receipt of a certification by the United States pursuant to paragraph 3 of Section 77(3), such confirmation is without prejudice to the rights of the United States.

2. The provisions of the Plan and of this Order shall be binding upon the Debtor and the PCTC Trustees, each of the Secondary Debtors and the Secondary Debtor Trustees, the creditors and claimants of the Debtor, the PCTC Trustees, each of the Secondary Debtors and the Secondary Debtor Trustees and the stockholders of the Debtor and each of the Secondary Debtors, whether or not adversely affected by the Plan and whether or not their claims shall have been filed and, if filed, whether or not approved, including all creditors, claimants and stockholders that have, as well as those that have not, accepted the Plan, upon all mortgage and indenture trustees, all parties to these proceedings and all other persons having any interest herein.

3. The Debtor and each of the Secondary Debtors, the PCTC Trustees, the Secondary Debtor Trustees and any corporation or corporations organized or to be organized for the purpose of carrying out the Plan are granted full power and authority to take all steps and to do all things necessary to, and shall, put into effect and carry out the Plan, in ac-

cordance with the provisions of the order or orders of this Court relative thereto, under and subject to the supervision and control of this Court, the laws of any state or the decision or order of any state authority to the contrary notwithstanding.

4. The Court reserves full jurisdiction of these proceedings and of all parties having an interest in these proceedings.

5. The PCTC Trustees shall serve copies of this Order on all parties customarily notified of hearings in these proceedings and all parties on the Order No. 3013 Service List.

6. As promptly as possible, the PCTC Trustees shall publish a notice stating that the Plan has been confirmed in newspapers in the capital cities of each state in which they conducted railroad operations prior to April 1, 1976, and in the following newspapers of general circulation:

Baltimore Sun
Boston Globe
Buffalo Courier Express
Chicago Tribune
Cincinnati Enquirer
Cleveland Plain Dealer
Detroit Free Press
Louisville Courier-Journal
New York Times
Philadelphia Inquirer
Pittsburgh Post Gazette
Wall Street Journal (all domestic editions)
Washington Post

JOHN P. FULLAM,
United States District Judge.

Excerpts From Confirmation Opinion, August 17, 1978

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In the Matter of	In Proceedings for the Reorganization of a Railroad
PENN CENTRAL TRANSPORTATION COMPANY, *Debtor*	No. 70-347
THE UNITED NEW JERSEY RAILROAD and CANAL COMPANY,	No. 70-347-A
BEECH CREEK RAILROAD COMPANY,	No. 70-347-B
THE CLEVELAND, CINCINNATI, CHICAGO and ST. LOUIS RAILWAY COMPANY,	No. 70-347-C
THE CLEVELAND & PITTSBURGH RAILROAD COMPANY,	No. 70-347-D
THE CONNECTING RAILWAY COMPANY,	No. 70-347-E
THE DELAWARE RAILROAD COMPANY,	No. 70-347-F
ERIE AND PITTSBURGH RAILROAD COMPANY,	No. 70-347-G
THE MICHIGAN CENTRAL RAILROAD,	No. 70-347-H
THE NORTHERN CENTRAL RAILWAY COMPANY,	No. 70-347-I
PENNDEL COMPANY,	No. 70-347-J
THE PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY,	No. 70-347-K
THE PHILADELPHIA & TRENTON RAIL ROAD COMPANY,	No. 70-347-L
THE PITTSBURGH, YOUNGSTOWN and ASHTABULA RAILWAY COMPANY,	No. 70-347-M
PITTSBURGH, FORT WAYNE and CHICAGO RAILWAY COMPANY,	No. 70-347-N
UNION RAILROAD COMPANY OF BALTIMORE, *Secondary Debtors*	No. 70-347-O

OPINION AND ORDERS *RE* CONFIRMATION AND CONSUMMATION OF PLAN OF REORGANIZATION

FULLAM, *J.* August 17, 1978

On March 17, 1978, this Court approved, subject to certain modifications, the Plan of Reorganization proposed by the Penn Central Trustees and separate Plans for each of the 15 Secondary Debtors[1] (the 16 Plans will be referred to as the Plan). Order No. 3279 directed that a ballot, and a copy of the Plan, this Court's Opinion, the SEC's Advisory Report and supplement thereto, and other pertinent information be distributed to the parties entitled to vote on the Plan. By overwhelming majorities, all classes of creditors, save three classes of stock of the Pittsburgh, Fort Wayne & Chicago Railroad, accepted the Plan. For example, claimants holding $1.003 billion in Class J secured claims (99.4%) voted for acceptance, while claimants holding $5.570 million (.6%) voted to reject the Plan.

A number of appeals have been taken from this Court's Approval Order,[2] briefing has been completed, and the Court of Appeals will hear oral argument some time during the week of October 16, 1978.

The two petitions before the Court (Doc Nos. 15716 and 15931) raise four separate questions: Should the Plan be confirmed; What date should be fixed for consummation of the Plan; Are the documents pertaining to the reorganized company and its securities in proper form in all respects; What

[1] *In re Penn Central Trans. Co.*, ... F.Supp. .... (E.D. Pa. 1978). Hereinafter cited as the *Approval Opinion*.

[2] The relief requested by the principal appellants is set forth in the Appendix.

terms should be included in the Consummation Order? The parties have had an opportunity to state their positions with respect to these questions at a hearing held on July 27, 1978.

A. *CONFIRMATION*

1. *Objections*

Under § 77(e) of the Bankruptcy Act, a plan which has been approved by the reorganization court and has received the required favorable vote of those entitled to vote should be confirmed, unless it is established that, in the interim, circumstances have changed in such a way as to undermine the basis of the court's earlier approval of the plan. *Insurance Group Committee v. Denver, Rio Grande & Western R.R. Co.*, 229 U.S. 607 (1947). For the most part, those now objecting to confirmation of the Plan have merely restated the legal arguments previously rejected by this Court in its *Approval Opinion*. The one exception is Bankers Trust Company, as Indenture Trustee of the Consolidation Mortgage, which has, at least in a sense, asserted that circumstances have in fact changed.

Bankers Trust originally objected to the way in which the Trustees were allocating retained asset security to the various mortgages, claiming that, as a result of crediting all of the value of the Harlem properties to the reversion, rather than assigning an appropriate value to the leasehold interests of the Debtor, the Consolidation Mortgage it represented was being shortchanged. Upon further analysis, the Trustees agreed, and made adjustments which had the effect of attributing some $29 million more in retained assets to the Consolidation Mortgage. Bankers Trust thereupon withdrew its objections, and supported the Plan during the approval proceedings, but expressly reserved the right to withdraw its sup-

port, and to oppose the Plan, if the Plan as finally approved by the Court accorded to any other mortgagees better treatment than the basic 10-triple-30 treatment proposed by the Trustees for all mortgages.

As originally proposed, the Plan provided for only one class of preference stock. However, in approving the Plan, this Court directed that there be two series of preference stock, Series A and Series B, and that four designated mortgages should receive Series A preference stock, whereas all other bondholders are to receive Series B. Series A preference stock is to be redeemed before the Series B preference stock. It is this modification of the Plan in the *Approval Opinion* which Bankers Trust apparently relies upon as a "changed circumstance," justifying denial of confirmation.

Although the *Approval Opinion* does not specifically deal with the possibility that the Consolidation Mortgage should be included within the group to receive Series A preference stock, it does discuss, and reject, the argument that the Lake Shore and Michigan Central Collaterals should be included in that group; and their claims to inclusion *vis-a-vis* the Consolidation Mortgage are stronger. In other words, non-inclusion of the Consolidation Mortgage follows *a fortiori* from denial of that status to the Lake Shore & Michigan Central Collateral Mortgages.

Under the 10-triple-30 distribution scheme as originally proposed, mortgages with retained asset coverages of 100% receive the same package of securities (30% A Bonds; 30% preference stock; 30% common stock) and 10% in cash as mortgages with retained asset coverages of more than 100%. This fact led a number of Indenture Trustees to use the term "super secured" to describe the fact that their mortgages had

retained asset coverages exceeding 100%. Three lines of argument were pressed by the super secureds in support of their contention that their mortgages were entitled to some form of better treatment under the Plan. The *Approval Opinion* discussed each of these arguments and rejected them.

The first argument is that because the 10-triple-30 distribution accords the same treatment to those mortgages which are secured by retained assets in excess of 100% as to those mortgages which have only 100%-retained asset coverage, the Plan is not fair and equitable, by reason of the failure to recognize the excess retained asset coverage. After a thorough analysis of the operation of the 10-triple-30 distribution scheme and consideration of an alternate distribution scheme, I concluded that even with respect to mortgages having retained asset coverage of as high as 275%, the 10-triple-30 distribution was fair and equitable.[3]

A number of super secureds which made this argument had no first liens on any retained assets. Their super secured status came about only because of the marshalling of asset values down from higher liens. This is true in the case of the Consolidation Mortgage. It has the third lien in a four-step sequential mortgage chain: First, the 013 Gold Bond Mortgage; second, the 014 Lake Shore & Michigan Central Collaterals; third, the 014 Consolidation Mortgage; and, fourth, the 015 R & I Mortgage. Any increase over the $29 million allocated by the Trustees to their leasehold interest in the Harlem would in the first instance be credited to the 013 Gold Bond Mortgage.

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[3] At the risk of over-simplifying what was a recurring theme in the Approval Opinion, the main reason for this conclusion is that the Plan makes possible the deferral of administration claims and has other advantages, proper allocation of which is not necessarily related to the retained-conveyed dichotomy.

For the purposes of considering whether the 10-triple-30 distribution is defective because it ignores retained assets in excess of 100%, it is necessary to look to first lien assets only. This is so because any other procedure results in a double count of the same retained asset values. For example, assume that there are three sequential liens each securing a claim of 100 units, and that there are 243 units of security. Lien 1 is 243% secured. If lien 2 is entitled to better treatment on the theory that it has 143 units of security then lien 1 would no longer be over-secured. If both liens got better treatment, each would be relying on the same asset values. In the context of an argument focused on the "disparities" of treatment, it is the first lien which would have the full benefit of the excess security.[4] We are dealing here in *comparisons*. If we compare two disparate piles of sand, we do not shovel sand from one pile to the other in the midst of the process. Under this analysis, the Consolidation Mortgage is in the same position as the Lake Shore Mortgage—both have zero first lien retained asset coverage. Of course, the Consolidation Mortgage is not entitled to better treatment if others with higher retained asset coverages are not.

Next, some of the super secureds argued that in liquidation their mortgages would fare better than those with 100% or less in retained asset coverage and therefore the Plan was not fair and equitable because the distribution scheme did not reflect the more favorable results on liquidation. In considering this argument, both first and second liens on retained assets were given weight and the full value of the Harlem lease was

[4] It is essential to bear in mind that because administration expenses are under the Plan partially satisfied in cash on consummation, or shortly thereafter, the amount of retained assets available for distribution is substantially less than the total amount of retained assets subject to the liens of the respective mortgages.

considered as at least potentially available to the Gold Bond, Lake Shore, Michigan Central, and Consolidation Mortgages. By and large, this argument was rejected because it was predicated on an over-simplified model based exclusively on "best case" assumptions. The principal liquidation scenario presented and rejected was that of the Lake Shore Collateral. It follows that the Consolidation Mortgage, which is subordinate to the Lake Shore Collateral, is in no better position.

Finally, it was argued that the equitable equivalence doctrine was violated by the 10-triple-30 distribution. The main thrust of this argument was directed to the Trustees' assumption that the estate was solvent and that unsecured and equity interests may participate. The Plan also withstood this challenge. Obviously, the Consolidation Mortgage falls within that conclusion.

It was only after consideration of these arguments that creation of two classes of preference stock was introduced. The detailed analysis of the super secureds' arguments led to the conclusion that within the class of those asserting super secured status there were such substantial differences in retained asset coverage that some form of better treatment of the most highly secureds might be appropriate. For example, the Mohawk & Malone and the Gold Bond Mortgages have first lien retained asset coverage of 275% and 243%, respectively. When this is compared with the retained asset coverage of other super secureds, for example, the Boston & Albany and the Michigan Central Collateral which have first lien retained asset coverages, respectively, of 115% and 116%, and with the retained asset coverages of the other mortgages, the magnitude of the difference is quite clear. That magnitude of the difference is relevant in and of itself, and also because the exceedingly high retained asset coverage

makes it more likely there might be a sufficient cushion of retained assets to absorb administration claim assessments in liquidation. Because of the amount of the Administration claims, no cushion would be provided by second lien asset values. Concededly, in drawing from the differences in retained asset coverages the conclusion that some better treatment was appropriate, the previously rejected arguments of the super secureds were in a sense partially adopted. The question posed, however, was significantly different: Did the substantial differences in the retained asset coverages of the various mortgages justify a modification of the Plan which did not do violence to the feasibility of the Plan but at the same time made the Plan more fair and equitable. The division of the preference stock into Series A and B is a modification which meets that specification, and the Plan, in my judgment, is made more fair and equitable by the recognition of the very high percentage of retained assets of the Mohawk & Malone and the Gold Bond Mortgages.

Also included within the group of mortgages to receive Series A preference stock are two Collateral Trusts secured by the stock of the Pittsburgh & Lake Erie Railroad. The retained asset coverages of these Collateral Trusts are approximately 119% and 131%. Inclusion of these Collateral Trusts within the group to receive Series A preference stock was not based exclusively on the retained asset coverage. Rather, I also gave weight to the fact that these mortgages were secured by non-operating property. Irving Trust, the Indenture Trustee for the two Collateral Trusts, had argued that because the security was non-operating property these Collateral Trusts were entitled to treatment far superior to that accorded them by the 10-triple-30 distribution. I rejected that argument. On the other hand, in considering the secured

bank settlement, weight was given to the nature of the security securing the secured bank's loan, the stock of Pennco. In the context of this Plan which incorporates a large number of compromises and seeks to avoid the ultimate litigation of a variety of complex and unanswered issues, it did not seem appropriate to recognize the potentially unique character of one creditor's security and not the others. Therefore, Irving Trust's Collateral Trusts were included within the group to receive Series A preference stock. Again, this modification for the benefit of the collateral trusts was possible without doing violence to the Plan.

The Consolidation Mortgage's position is in no way similar to that of the Mohawk & Malone and Gold Bond Mortgages or the Collateral Trusts. Exclusion of the Consolidation Mortgage from the group of mortgages to receive Series A preference stock was *sub silentio* previously determined in the *Approval Opinion*, and as the discussion makes clear, there is no merit in Bankers Trust's objection to confirmation.

There is another objection which warrants mention. Penn Central Company, the owner of the Debtor's stock, supported the Plan during the approval hearings and voted in favor of the Plan. Under the Plan, Penn Central Company receives 10% of the reorganized company's new common stock. In connection with the hearing on confirmation, Penn Central Company supported confirmation and advocated prompt consummation as in the best interests of the shareholders of Penn Central Company.

Joseph Shaffer, a shareholder of Penn Central Company purporting to act for eight other shareholders who own 147,600 of the 24 million outstanding shares of Penn Central Company, appeared at the hearing and opposed confirmation and consummation of the Plan. Shaffer submitted an affidavit

and a copy of his brief on appeal to the Third Circuit. On the same day as the confirmation hearing before this Court, Shaffer initiated proceedings before the Bankruptcy Court presiding over Penn Central Company's Chapter XI proceedings seeking to have the previously entered Order of that Court authorizing an affirmative vote on the Plan set aside. A hearing on Penn Central Company's Motion to Dismiss the proceedings in the Chapter XI court is scheduled a few weeks hence.

Shaffer's strategy appears to be carefully conceived. Ordinarily, this Court would have no jurisdiction to collaterally review an order of the Chapter XI court. On the other hand, the Chapter XI court's Order was entered on April 21, 1978, and no appeal was taken. Now the argument appears to be that this case must come to a standstill until Shaffer's Chapter XI litigation is completed. The simple answer is, however, that Penn Central Company's vote was authorized by the Chapter XI court and this Court accepts that vote as valid.

Apparently, Shaffer also objects to confirmation of the Plan on the ground that it is not fair and equitable to Penn Central Company. No attempt has been made to suggest that there are any changed circumstances supporting Shaffer's contention. Rather, the objection is simply that the distribution to Penn Central Company is inadequate. Shaffer's objection to confirmation must be denied for two reasons: (1) he is not a shareholder of the Debtor as required by § 77(c)(13); and (2) there are no changed circumstances warranting reconsideration of the treatment of the Debtor's stock under the Plan.

In the interests of clarity, it should be noted that Shaffer's complaints are permeated by misconceptions of the role of

this Court and the realities of these proceedings. The Penn Central Company's Chapter XI plan is not and never has been before this Court. Therefore, the amount of the reorganized company's stock which is to be distributed pursuant to the Chapter XI plan of Penn Central Company in exchange for Penn Central Company shares is not within this court's purview. The evils allegedly committed by the United States Government are not curable in this Court or through the Plan of Reorganization. The RRRA is constitutional and implementation of that statute is a matter for the Special Court. When these two aspects of Shaffer's submission are excised, the only remaining point is that if the Trustees obtain a *Valuation Case* judgment of $11 billion, or some other amount of that magnitude, the creditors who are giving up debt claims in exchange for common stock will receive a windfall.

The $11 billion figure is taken from a letter authored by an attorney on the SEC staff who stated that the range of *Valuation Case* recoveries is $550 million to $11 billion. The Special Court's Opinions to date were extensively described in the *Approval Opinion* because they constituted part of the relevant context in which the Plan must be considered. The valuation theories which would generate a *Valuation Case* award approaching $11 billion have been resoundingly rejected by the Special Court.

> "We should advise the parties, in interest of their avoiding the expense incident to complex engineering studies, that we do not intend to consider estimates of reproduction costs, variations on that theme such as 'assemblage value,' value of materials 'in place,' trended original costs, gross liquidation value or societal values." *In re Valuation Proceedings under §§ 303(c) and 303 of the Regional Rail Reorganization Act of 1973* (445 F. Supp. 994, 1031 (Special Ct. 1977)).

The valuation theories adopted by the Special Court would seem to rule out any prospect of a "windfall" recovery.

I pointed out in the *Approval Opinion* that "the immediate issue is whether the risks, uncertainties and possible benefits of the *Valuation Case* litigation, and the consequences of the RRRA process, are being fairly apportioned in the distributions proposed in the Plan."[5] The answer I gave was that "the allocations are fair and equitable." The correctness of that answer is demonstrated by considering what Penn Central Company's position would be in the absence of the Plan. The debt claims against the estate far exceed the value of the retained assets. Therefore, the Debtor's stock interests could receive at most only some form of contingent claim against the *Valuation Case* recovery. But if Penn Central Company received only a contingent claim, its stock would be worth pennies for many years to come. When the results of the *Valuation Case* became known, there would be some value to Penn Central Company's stock if, but only if, the recovery was high enough to pay off all other claimants. In contrast, under the Plan, Penn Central Company receives 10% of the common stock of the reorganized company and thereby receives 10% of the value of the ongoing business operations of the reorganized company and the potential increments in that value. Thus, in lieu of waiting a decade in which the Penn Central Company's stock would be worth little or nothing, the stockholders of Penn Central Company will own stock which has value. If they wish, they may still await the outcome of the *Valuation Case*, but they now have other choices as well.

[5] *Approval Opinion*, ... F. Supp. at .....

The Plan and the compromises which support it also provide other benefits to Penn Central Company. The certificates of value which are issued by the United States bear interest at 8% compounded annually from April 1, 1976. But, under the Plan, interest on claims, as well as on the new securities, is handled quite differently. (1) The D Notes issued to taxing authorities will bear a 7% interest rate. (2) In calculating the amount of secured creditors' accrued interest, interest accruals between April 1, 1976, and December 31, 1977, were booked at the contract rate applied only to principal, and the A and B Bonds, which are exchanged for 30% of the secured claimants' claims, bear no interest between January 1, 1978, and April 1, 1981, but thereafter accrue interest at 7% compounded semi-annually to the extent not paid. (3) Sixty percent of the secured claimants' claims are paid in non-interest-bearing securities, preference and common stock. (4) Most unsecured creditors receive no interest at all for the post-reorganization period and the Plan securities issued to unsecured creditors are non-interest-bearing.

The benefit of these aspects of the Plan to the Penn Central Company lies in the fact that all securities ahead of the reorganized company's common stock will be redeemed if the *Valuation Case* base award is approximately $887 million.[6] Any base award in excess of that amount will directly benefit equity and in particular Penn Central Company as a holder of 10% of the reorganized company's common stock. A much different situation would occur in the absence of the Plan.

[6] Add to the $797.1 million shown in the *Approval Opinion* (..... F. Supp. at .....) the additional amount of 1976 base award, $90.26 million, necessary to meet the C-1, C-2, and D Notes to be issued as the result of recently approved settlements with Amtrak, ConRail, Six Month Creditors, and the State of New York. Included in the calculation is the cost of servicing the D Notes on a current basis.

Under the absolute priority rule, it would appear appropriate to accord claimants, secured and unsecured, the benefit of the 8% interest rate on the certificates of value. That interest accrues on the *Valuation Case* award because of the delay in receipt of the award. The parties who suffer from that delay should as a matter of fairness be accorded the benefit of the Government's payment. The impact of such an analysis is substantial. Penn Central Company's contingent claims on the *Valuation Case* proceeds would be subordinated to a vastly increased amount of claims. By way of illustration, if only the amount of claims satisfied by preference stock and common stock is assumed to be satisfied by a debt security issued as of January 1, 1978, with an 8% interest rate compounded annually, the *Valuation Case* award necessary to satisfy outstanding securities is increased from $887 million to $2,148.6 million.[7] Of course, under the Plan, Penn Central Company begins to participate at a 10% rate if the *Valuation Case* recovery reaches $887 million, and therefore a *Valuation Case* base recovery of $2,148.6 million would result in Penn Central Company indirectly receiving $126 million of the base award in excess of $887 million. Converted to 1987 dollars, this is about $311 million. On the other hand, if there were no Plan, the same base award would generate zero recovery to the Penn Central Company.

[7] From Page 160 of the Amended Plan take the amount of claims secured creditors give up in exchange for preference and common stock, and add that amount, $1,134 million, to the amount of unsecured claims shown on Page 132, $701.1 million, and then subtract $30 million to reflect the Six Month Creditors' settlement to give a total of $1,805.1 million. Calculate the future value of that amount 10 years hence at 8% interest compounded annually. The future value of $3,897.1 million is then converted to a 1976 base award of $1,577.6 million. Next the $887 million (fn. 6, *supra*) must be adjusted by eliminating the amount contained therein, $316 million, to satisfy preference stock and CBI, to yield $571 million. The $571 million and the $1,577.6 million are added to give a total of $2,148.6 million.

It should be noted that the figures used in the preceding analysis are subject to criticism because by hypothetically converting the preference and common stock to debt securities Pennco's asset values would be freed up. On the other hand, a substantial portion of Pennco's value would be absorbed by completing the analysis and according the 8% interest rate to all claims post-April 1, 1976, and all securities issued under the Plan. Moreover, because the debt securities would have a downside risk but no upside gain, it might be appropriate to view any remaining portion of Pennco's asset values as fairly allocable to holders of the converted preference and common stock. The illustration is not intended to assert exact figures or the precise legal consequences, but merely to demonstrate in a general way the very concrete benefits of the Plan to Penn Central Company.

In sum, while sympathetic to the protestations of Mr. Shaffer and the frustrations which are associated with the complexity of the various proceedings in this Court, the Chapter XI Court, and the Special Court, I remain convinced that the Plan's treatment of the Debtor's stock interest is fair and equitable.

2. *Cramdown*

Section 77(e) empowers the Reorganization Court to confirm a Plan even if a class rejects the Plan. The Pittsburgh, Fort Wayne & Chicago Railway Company Plan was submitted to four classes of stockholders for vote. None of the 7% original guaranteed stock or the 7% special guaranteed stock was voted. The vote of the common stock, 52.5% in favor of the Plan and 47.5 against the Plan, was below the required two-thirds majority. Notwithstanding these results, the Court finds that the prerequisite conditions of cramdown as

specified in § 77(e) are satisfied and the Pittsburgh, Fort Wayne & Chicago Railway Company Plan will be confirmed.

As previously discussed in connection with the objections to confirmation, Penn Central Company voted all of the Debtor's stock in favor of the Plan. When Mr. Shaffer's efforts to annul that vote were described at the hearing on confirmation, the Trustees suggested that the Court might as a precaution consider exercising the § 77(e) cramdown power. I am satisfied that the exercise of the cramdown power would be appropriate and I would exercise that authority if the procedural posture so warranted. The Penn Central Company's vote in favor of the Plan must be considered valid at this point and there is no real utility in formally exercising the cramdown authority.

B. *CONSUMMATION DATE*

A very important issue which the Court must now decide is whether to permit consummation to go forward notwithstanding the pendency of appeals from the Order approving the Plan, and the probability that those same appellants will appeal from the Confirmation Order and Consummation Order. Not surprisingly, in their written submissions the supporters of the Plan stress the need for prompt consummation while the appellants argue for delay. In their petition the Trustees have suggested that even if the Plan is consummated immediately, adequate provision could be made in the Consummation Order to protect the interest of appellants. At the hearing, the Trustees presented a specific additional provision to the Consummation Order, ¶ 7.7, which reserves jurisdiction in the Reorganization Court to order, after consummation, the payment of cash and the issuance of securities of the reorganized company in amounts necessary to accord

to the appellants the full benefit of any success they may achieve in the Court of Appeals. (The indentures and other documents would be amended to bring the documents into conformity with the Trustees' proposal.)

Supporters of the Plan have reiterated their position that the Plan should be consummated forthwith. The Securities and Exchange Commission has also advocated prompt consummation as the course most consistent with the interests of the public security holders who have accepted the Plan and who are to receive cash and securities on consummation.

Some of the appellants are satisfied with the Trustees' proposal (Irving Trust and Bankers Trust). Others suggest that the Confirmation Order should be entered, but immediately stayed, either until the appeals are decided (Manufacturers Bank of Detroit), or until November 15, subject to reconsideration at that time (Wilmington Trust). One appellant (Bank of New York) is satisfied with the Trustees' proposal only if the additional A Bonds it seeks on appeal are actually reserved and set aside on consummation date. Wilmington Trust and Manufacturers National Bank of Detroit also urge that, if their requests to delay consummation are not honored, the securities they seek on appeal should be set aside.

I shall now briefly review the factors which must be considered in arriving at a decision.

The need for prompt consummation is indeed very great. The major compromises upon which the Plan depends are conditioned upon actual consummation of the Plan this year, as are the further settlements recently approved. As a practical matter, therefore, the situation must be regarded as presenting a choice between prompt consummation or the possibility that there will be no Plan in the foreseeable future.

Of almost equal importance is the desirability of having the reorganized company established and operating, under the control of its board of directors, as soon as possible. This is essential for efficient planning in any event, but is particularly vital here because of the importance of obtaining the benefit of the debtor's huge tax-loss carry-forwards. Unless consummation occurs well in advance of the end of this calendar year, there is a substantial likelihood that some of these benefits might be lost.[8]

In short, delay in consummation involves grave risks, which cannot, as a practical matter, be guarded against by the posting of security as a condition of stay.

Apart from these compelling reasons, equitable considerations militate against further delaying distributions to the overwhelming majority of creditors satisfied with the Plan, merely because the Indenture Trustees of a handful of issues and a relatively few individual creditors seek better treatment than the Plan provides.

Having thus summarized the important reasons for prompt consummation, it is necessary to refer to other factors which must be taken into account. It is, of course, extremely important to avoid prejudicing the appellate rights of the appellants. This Court should take no action which could reasonably be interpreted as an attempt to moot the appeals,

[8] The 1979 income of the reorganized company will be sheltered, but additional 1979 income of about $224 million can be sheltered, if sources can be acquired. While it would theoretically be possible to obtain the full benefit by corporate action late in 1979, the likelihood of achieving that result diminishes with each day after January 1, 1979. Only the Board of Directors of the reorganized company can plan and carry out the negotiations leading to the required transactions; no serious negotiations can occur until its corporate existence commences; and a great deal of lead-time is required.

or to deprive the appellants of the fruits of any victory they may achieve at the appellate level. A more subtle but equally important point is that the Court must take no action which could be interpreted as attempting to control the timing of appellate decision, or as interfering with the Court of Appeals' determination as to when and how the appeals should be decided.

And finally, I believe it is desirable, if at all possible, to reduce the need for burdening the Court of Appeals with interim applications for stays, and to increase the likelihood that any applications which may be presented to the Court of Appeals will not need to be acted upon until the appeals themselves have been argued.

The remaining task of this Court is to determine how these various competing considerations can best be accommodated.

Most of the appeals originally taken from the Approval Order have been withdrawn. Although the reasons the remaining appellants' advance in support of the relief requested pose fundamental challenges to the theoretical basis of the Plan, with one exception the adjustments they seek are limited in scope. Even if each appellant were to be fully successful on appeal the feasibility of the Plan would not be jeopardized. Complete success on appeal would result in a reduction in the amount of B Bonds, Preference Stock, and Common Stock to be issued and a substantial increase in the Amount of A Bonds to be issued. Notwithstanding this increase in the total amount of A Bonds issued, only a modest amount, if any, of

A Bonds would remain unsatisfied in 1987.[9] A *Valuation Case* base recovery of approximately $594 million would fully satisfy the A Bonds outstanding.[10] Any A Bonds not satisfied from *Valuation Case* proceeds would be payable over ten years in equal annual installments with accrued interest. It cannot fairly be contended, and indeed no one has asserted, that potential debt of this magnitude renders the Plan not feasible.

The issuance of any new A Bonds to satisfy the appellants would have serious ramifications for other creditors, in that it would decrease the likelihood of early redemption of A and B Bonds, and increase the likelihood that some of their debt securities would be converted to equity. The adverse impact upon other participants, while serious, would be precisely the same, whether consummation occurred before or after the appeals were decided. Notwithstanding this potential impact and the possibility that the Court of Appeals might adopt reasoning which would, if implemented throughout the Plan, result in better treatment to the holders of bonds for which no

[9] The Appendix to this Opinion is an attempt to calculate, subject to the assumptions stated, how the issuance of more A Bonds would work out. The estimated A Bond overhang of $46.08 million may or may not prove correct. An 8.6% increase in the forecasted ADP proceeds for 1978 through 1983 would completely cover the overhang. Moreover, even if a much smaller percentage increment in ADP proceeds was obtained, if the increment was in the early years, the overhang would be eliminated because interest costs, which begin in April of 1981, would be avoided. There is also the possibility that some of the estimates of payments and the reserves will prove too high or unnecessary.

[10] *Valuation Case* award necessary to pay all Notes $398.3 million, (*Approval Opinion* F. Supp. at ....), plus the base award to cover the settlements (fn. 6 *supra*), $90.26 million, plus the base award to cover B Bond principal and interest (see Appendix) $86.5 million, plus the base award to cover the outstanding A Bonds, $18.65 million.

appeal has been taken, no non-appellant has objected to immediate consummation. That being so, the remaining question is whether or not the Trustees' proposal adequately protects the interest of the appellants.

In my judgment the Trustees' proposal for a comprehensive reservation of jurisdiction is more than adequate. It guarantees to the appellants that to the extent that they are successful this Court will have reserved jurisdiction to direct the payment of cash or the issuance of securities adequate to comply with any appellate mandate or to implement any appellate decision on remand. I see no purpose in specifying amounts of A Bonds or cash to be reserved as requested by some of the appellants. It is theoretically possible that on a given day in 1979 or 1980 there would not be cash on hand to satisfy what the appellate process found the appellants were entitled to. On the other hand, the forecasted asset disposition proceeds from now through 1980 is so great that cash would shortly become available. Issuance of additional securities poses little problem.

The one exception to the foregoing comments is the appeal which has been filed on behalf of a small number of stockholders of Penn Central Company, the Debtor's sole stockholder. These appellants contend that the Approval Order should be vacated in its entirety, and that the reorganization of the Debtor should await the outcome of the *Valuation Case*. For the reasons stated in connection with their objections to the confirmation, their standing in these proceedings is so dubious, and the merits of their arguments so tenuous, that the pendency of their appeal plainly does not justify delaying consummation.

Having considered all of the foregoing factors, I have concluded that the consummation date should be fixed for October 24, 1978.

The next question is whether any distributions should be made to the bondholders under mortgages for which Indenture Trustees have taken appeals. The Trustees have proposed a procedure which has much to commend it. Holders of bonds for which an appeal has been taken would have the option of accepting the distributions specified in the Plan and foregoing the right to any benefits which might accrue from the appeal, or waiting until the appeal was decided and then receiving a distribution which was consistent with the results on appeal. Presumably, this choice would be exercised only after disclosure satisfactory to the Trustees, the appealing Indenture Trustees, and the Court. Individuals who voted in favor of the Plan would have the option to stick by their original judgment. The drawback is that persons holding identical bonds would receive different treatment under the same Reorganization Plan. Yet, I am quite certain that if the bondholders were given the choice of waiting until the appellate process is concluded or accepting the distributions as specified in the Plan, a great many would accept Plan distribution and execute releases of any rights on appeal.

An alternative to this procedure would be to distribute to all pursuant to the Plan on consummation date, but if any of the appeals are sustained, the securities to be replaced would be called in exchange for the new securities. For example, if it were found that a particular bond issue was entitled to Series A Preference Stock instead of Series B Preference Stock, the Series B would be called and the Series A would be issued. While this approach appears relatively easy because all the reorganized company's securities will be in registered form, it ignores the large number of bondholders involved, the fact that most of the bonds are now in bearer form, and the substantial burdens of the issuance and recall process. There is also an appearance of unfairness in that the bondholders have the best of both worlds. On the other hand, this Court has

previously decided that they are entitled to that which is provided in the Plan, and giving it to them now seems entirely fair. The final alternative is simply to withhold distribution to the bondholders under any mortgage for which the Indenture Trustee has taken an appeal. Since at least some of the Indenture Trustees have asked that the consummation be stayed, it seems somewhat anomalous that they would object to having that relief granted in partial form.

There is no clear balance in favor of any of the alternatives. I am concerned that the situation be as clear as possible to the public at large, and that money and time not be wasted by having two distributions when one would suffice. My conclusion is that the best approach is to withhold all the distributions to bondholders under the mortgages for which the Indenture Trustees have taken appeals until December 15, 1978.

Before that date arrives, counsel will have an opportunity to be heard with respect to whether or not the distribution should be withheld for some short additional period. Pending an order authorizing distribution, cash due under the Plan to the bondholders under mortgages for which appeals have been taken will be escrowed in an interest bearing account. Any interest earned on the account after the date on which any other class J creditor receives his distribution from the exchange agent will be added on a pro rata basis to the cash distributions which are later made. As for the securities, they will be issued but not distributed. If the appellate process is concluded in time to permit distribution shortly after December 15, 1978, no additional problems will arise. In the event there is no such distribution, then an accommodation would have to be made to take account of the December 31, 1978 redemption of A Bonds. This redemption is forecasted at $169 million. The total A Bonds under the mortgages for which ap-

peals are pending constitute 17.79% of all A Bonds to be issued under the Plan. Therefore, that percentage of ADP proceeds will have to be set aside for later application when distributions are made. I recognize that it can be argued that a slightly different procedure should be followed. If the maximum amount of A Bonds which may be required if all the appeals are successful is taken account of, the set aside percentage increases to 32% . I do not mean to foreclose that result. Counsel will have an opportunity to express themselves on that point in connection with the hearing which will be held to determine what happens after December 15, 1978.

* * *

E. THE ROLE OF THE BOARD OF THE REORGANIZED COMPANY

A perusal of the corporate documents involved in the consummation of the Plan underscores the intricate and delicate relationship between the various creditor interests in the Penn Central estate. On the whole, of course, their interests coincide: the success of Pennco as an ongoing business; development by the reorganized company of other corporate activities which maximize the benefits of its tax-loss carryforwards and constitute sound ongoing business operations; and the successful prosecution of the *Valuation Case*. There are, however, some situations in which the Board of Directors of the Company will find it necessary to make decisions which will affect one class of owners somewhat differently from the others. This is an unusual situation for a board to confront, but it arises because of the complexities of the capital structure of the reorganized company. There is no reason to suppose that the Board will not be equal to the task.

I reiterate the view expressed in the *Approval Opinion*, namely, that the parties and their counsel are to be congratulated for a job well done.

Excerpt From Transcript of August 16, 1978, Hearing Before Honorable Emil F. Goldhaber, Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

IN RE: PENN CENTRAL COMPANY, etc., *et al.*,
Debtors-in-Possession.

Chapter XI

Bankruptcy No. 76-1469

THE COURT: Anyone else wish to be heard? I am in agreement with the statement made by Mr. Berger. In other words, I think that the taking of any depositions in the adversary proceeding now before me would be pointless in view of the fact that I sustain the motion of the Penn Central Company for summary judgment. Accordingly, the motions filed by the shareholders are denied, and as I previously said, the motion for summary judgment is granted and after making the necessary factual findings which will be incorporated in an order of confirmation, I will enter an order of confirmation after Judge Fullam enters an order of confirmation of the Penn Central Transportation Company.

Order to Show Cause, August 3, 1978

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In the Matter of
PENN CENTRAL COMPANY,

Debtor,

JOSEPH A. SCHAFER, WHITNEY W. IRONS, ALTON P. GAINER, EMIL MILAN, CAROL KUCHAR, LEO SUKALA, STEPHEN SLOBODA, CHARLES W. HANNON, and PHILIP MORTON,

Plaintiffs,

vs.

PENN CENTRAL COMPANY,

Defendant.

Chapter XI Case

No. 76-1469 EG

ORDER TO SHOW CAUSE

NOW August 3rd, 1978, on consideration of the annexed Motion for Summary Judgment filed by the Debtor-in-Possession herein, it is hereby

ORDERED that the plaintiffs above-named are directed to appear before this Court on Wednesday, *August 16, 1978,* at 10 o'clock EDST in Room 3714 U. S. Court House (Court Room No. 1) Independence Mall West, 6th and Market Sts., Phila., Pa., 19106, and show cause why summary judgment should not be entered *dismissing* the above-captioned complaint.

EMIL F. GOLDHABER,
Bankruptcy Judge,
By FLORENCE L. CAUBLIN.

Order Authorizing Penn Central Company Debtor-in-Possession to Vote in Favor of Penn Central Transportation Company's Amended Plan of Reorganization

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In the Matters of

PENN CENTRAL COMPANY, and its wholly owned subsidiary, PENN CENTRAL INTERNATIONAL N.V.,

Debtors-in-Possession.

Chapter XI Case

Bankruptcy No. 76-1469 EG

AND NOW, this 21st day of April, 1978, upon the Application of Penn Central Company, Debtor-in-Possession in the above-captioned Chapter XI case, by its co-counsel, Schnader, Harrison, Segal & Lewis, it is hereby:

ORDERED, That Penn Central Company is authorized to vote in favor of the Amended Plan of Reorganization filed by the Trustees for Penn Central Transportation Company and approved by the Honorable John P. Fullam for submission to the creditors of Penn Central Transportation Company.

BY THE COURT:

EMIL F. GOLDHABER,
Bankruptcy Judge.

Approval Order, March 17, 1978

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In the Matter of PENN CENTRAL TRANSPORTATION COMPANY, *Debtor*	In Proceedings for the Reorganization of a Railroad Bky. No. 70-347	3455
THE UNITED NEW JERSEY RAILROAD & CANAL COMPANY,	Bky. No. 70-347-A	187
BEECH CREEK RAILROAD COMPANY,	Bky. No. 70-347-B	115
THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,	Bky. No. 70-347-C	195
THE CLEVELAND & PITTSBURGH RAILROAD COMPANY,	Bky. No. 70-347-D	139
THE CONNECTING RAILWAY COMPANY,	Bky. No. 70-347-E	155
THE DELAWARE RAILROAD COMPANY,	Bky. No. 70-347-F	136
ERIE AND PITTSBURGH RAILROAD COMPANY,	Bky. No. 70-347-G	119
THE MICHIGAN CENTRAL RAILROAD,	Bky. No. 70-347-H	131
THE NORTHERN CENTRAL RAILWAY COMPANY,	Bky. No. 70-347-I	145
PENNDEL COMPANY,	Bky. No. 70-347-J	139
THE PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY,	Bky. No. 70-347-K	243
THE PHILADELPHIA AND TRENTON RAIL ROAD COMPANY,	Bky. No. 70-347-L	126
THE PITTSBURGH, YOUNGSTOWN AND ASHTABULA RAILWAY COMPANY,	Bky. No. 70-347-M	121
PITTSBURGH, FORT WAYNE AND CHICAGO RAILWAY COMPANY,	Bky. No. 70-347-N	132
UNION RAILROAD COMPANY OF BALTIMORE, *Secondary Debtors.*	Bky. No. 70-347-O	121

ORDER APPROVING THE PLAN

AND NOW, this 17th day of March, 1978, upon consideration of the "AMENDED PLAN OF REORGANIZATION FOR PENN CENTRAL TRANSPORTATION COMPANY DATED MARCH 17, 1978" (Doc. No. 15220), including the Plans of Reorganization of each of the Secondary Debtors therein contained (all of which are hereafter referred to, collectively, as "THE PLAN"), and the schedule of distribution set forth in Appendix B to Doc. No. 15221, the Court makes the following findings:

1. The Plan conforms to the requirements of this Court's Opinion dated March 9, 1978.

2. The Plan complies with § 77(b) of the Bankruptcy Act.

3. The Plan is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders with no unfair discrimination among classes of creditors or stockholders, conforms to the law regarding participation of various classes of creditors and stockholders, and complies with all of the requirements of law.

4. The Plan is feasible.

5. The Plan makes adequate provision for the payment of allowances, including compensation and reimbursement of expenses as provided in § 77(c)(12); the amount reserved in the Plan for such purposes is in excess of the total amount of claims for such payment which can reasonably be anticipated.

WHEREFORE, IT IS HEREBY ORDERED that:

1. The Plan is APPROVED.

2. The final date for mailing written acceptances or rejections of the Plan shall be May 12, 1978.

3. Voting on the Plan shall be governed by the provisions of the Voting Order, Order No. 3456, entered this date.

4. The provisions of §6.2 of the Plan ("Treatment of Other Executory Contracts") shall be deemed to be without prejudice to the contentions asserted by various parties in response to the "Report of the PCTC Trustees and the Trustees of the Secondary Debtors with Respect to Prebankruptcy Executory Contracts" (Doc. No. 14122), all of which are reserved for later determination by this Court.

JOHN P. FELLAM,
J.

Excerpts From Opinion of March 17, 1978

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In the Matter of PENN CENTRAL TRANSPORTATION COMPANY, *Debtor*	In Proceedings for the Reorganization of a Railroad No. 70-347
THE UNITED NEW JERSEY RAILROAD & CANAL COMPANY,	No. 70-347-A
BEECH CREEK RAILROAD COMPANY,	No. 70-347-B
THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,	No. 70-347-C
THE CLEVELAND AND PITTSBURGH RAILROAD COMPANY,	No. 70-347-D
THE CONNECTING RAILWAY COMPANY,	No. 70-347-E
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ERIE AND PITTSBURGH RAILROAD COMPANY,	No. 70-347-G
THE MICHIGAN CENTRAL RAILROAD COMPANY,	No. 70-347-H
THE NORTHERN CENTRAL RAILWAY COMPANY,	No. 70-347-I
PENNDEL COMPANY,	No. 70-347-J
THE PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD COMPANY,	No. 70-347-K
THE PHILADELPHIA AND TRENTON RAILROAD COMPANY,	No. 70-347-L
THE PITTSBURGH, YOUNGSTOWN & ASHTABULA RAILWAY COMPANY,	No. 70-347-M
PITTSBURGH, FORT WAYNE & CHICAGO RAILWAY COMPANY,	No. 70-347-N
UNION RAILROAD COMPANY OF BALTIMORE, *Secondary Debtors*	No. 70-347-O

OPINION OF THE COURT APPROVING PLAN OF REORGANIZATION
(Revised March 17, 1978)

PART I

A. INTRODUCTION

The Trustees of the Penn Central Transportation Company, Debtor, have presented for approval a Plan of Reorganization for that company and 15 Secondary Debtors whose lines were a part of the Penn Central system. These related documents are generally referred to collectively in these proceedings as "the Plan." I have concluded that, subject to a few relatively minor adjustments, the Plan complies with all legal requirements, is feasible, fair and equitable, and should therefore be submitted to the vote of the participants. The Opinion which follows sets forth the reasons for those conclusions.

The Opinion deals with a great many issues and the contentions of a large number of litigants. The reader will encounter certain recurring themes, because the same legal concepts or the necessities of a certain set of circumstances, may have important, but slightly different, bearing upon the issues being decided in a variety of contexts. Every effort has been made to avoid unnecessary repetition, but in some instances reprise seemed preferable to constant cross-references.

In anticipation of the hearings on the Plan, this Court extended an invitation to the Securities & Exchange Commission to review the proposed Plan and comment upon it. This was done because the traditional role of the Interstate Commerce Commission in railroad reorganization proceedings has been abrogated by statute, with respect to the Northeastern bankrupt railroads subject to the RRRA. The SEC

graciously responded to the Court's invitation, and its Report has provided very valuable assistance to the Court and to the parties.

The SEC Report has been particularly helpful with respect to feasibility issues and what may be referred to as the legitimacy of the new securities proposed to be issued pursuant to the Plan. I am satisfied that the SEC's valuations, and its conclusions concerning feasibility are sound. I incorporate herein the elaboration of these issues contained in the SEC Report, and have concluded that further discussion of feasibility and valuation issues in this Opinion would be superfluous.

The excellent sketch of the pre-bankruptcy history of the Debtor which is included in the SEC Report has also made it unnecessary to repeat that material here.

Because of the unavoidable length and complexity of the Opinion, I have provided at the outset a brief summary of the contents, for the benefit of those who are more interested in the decision of a particular issue than in the legal reasoning leading to that decision.

B. SUMMARY OF OPINION

The Opinion begins by explaining what a reorganization is, and how it occurs. This is followed by a review of the history of the Penn Central reorganization proceedings from June 21, 1970 to date. In combination, these opening sections of the Opinion point up the unique problems for this estate stemming from the implementation of the RRRA: the existence of huge amounts of unpaid administration claims against the estate, and the fact that the rail assets have been conveyed to ConRail but have not yet been paid for.

Next, a summary of the Plan itself is provided. This section begins with an explanation of how the Plan attempts to deal with the uncertainties stemming from the RRRA-related problems. This is followed by a detailed description of the significant terms of the new securities to be issued under the Plan, and the proposed distribution of those securities. The section concludes with an explanation of the relationship between the Penn Central Plan and those of the Secondary Debtors.

The next section contains a discussion of the compromise aspects of the Plan. The principal conclusions are that a reorganization plan may be achieved at this time without finally litigating all of the many disputed legal and factual issues; that it is permissible to incorporate in a reorganization plan compromise resolutions of disputed issues, regardless of whether the compromises are agreed upon by all of the affected parties, so long as the resolution is fair and reasonable, within the range of results which litigation could be expected to provide, and in the best interests of the affected parties. The major compromise settlements embodied in the Plan—with the Federal Government, the secured bank group, and the New Haven Trustee—are then discussed and approved.

The following section contains a summary of the principal issues involved in the Valuation Case litigation before the Special Court, the status of that litigation, and its relationship to the provisions of the Plan.

The balance of the Opinion deals with objections to various features of the Plan which have been expressed by the litigants. Section II-F deals with the claims of state and local taxing entities. In summary, the Court concludes that penalties should be disallowed, that tax claims need not be

paid in full in cash; that the lien of tax claims against the rail assets conveyed to ConRail are not automatically transferred to the Debtor's retained assets; and that the Plan makes adequate provision for these claims.

Section II-G deals with the Plan's provisions relating to the claims of secured creditors (Class J), and with a number of objections to that treatment. The conclusion is that the claims of secured creditors are properly classified in a single class, and are accorded fair and equitable treatment under the plan. The various arguments of the so-called "super-secured" claimants (creditors whose claims are more than fully secured by retained assets) are discussed, and rejected for the most part; but the Court has concluded that slightly different treatment should be provided the claims of bondholders under four specified mortgages (Mohawk & Malone; Gold Bond; New York Central 6% due 1990; Penn Central 6½% Bonds due 1993). Specifically, their rights to redeem their preference stock are to have priority over the random-selection-by-lot redemptions for other Class J creditors.

The Opinion then deals with various disputes concerning the manner in which retained assets have been allocated among various mortgages for purposes of establishing the correct allocations of A and B bonds under the Plan. The Court rejects most of the objections against the Plan but does require a slight revision in the allocation of retained assets to the R & I Mortgage in recognition of the denial of recourse against properties sold by the Debtor before bankruptcy and not released from the mortgage.

The remaining objections of Class J creditors are discussed and overruled, with minor exceptions. The Court agrees with the contention of Girard Bank as Indenture Trustee of the Pennsylvania Railroad General Mortgage that the after-

acquired property clause renders that mortgage a lien on certain disputed branch lines.

Section II-H of the Opinion discusses the claims for priority under the so-called "six months" rule and under the "necessity of payment" doctrine. The conclusion is that the six months priority cannot be recognized in this proceeding, because there is no "current debt fund" and because there have been no diversions for the benefit of mortgagees. And the Court concludes that the "necessity of payment" doctrine does not apply at this time.

Section II-I deals with claims for priority asserted by Bank Setoff claimants, the interline railroads, and claims for freight loss and damage. All of these claims for priority treatment are rejected.

Finally, the Opinion deals with the contingent claims asserted by Amtrak and ConRail, and with certain miscellaneous claims of the Federal Government, and concludes that the Plan contains adequate provisions for these claims.

PART II

A. BACKGROUND

1. Reorganization Process

Federal bankruptcy law addresses the problems of financially embarrassed business debtors, and provides solutions which fall into two general categories: (1) liquidation, or "straight" bankruptcy, in which the assets of the debtor are sold and the proceeds distributed to its unsecured creditors in proportion to the amounts of their claims, whereupon all

debts are discharged and the debtor can start anew[1]; and (2) rehabilitation through the reorganization of the enterprise[2]. Generally speaking, if there is a reasonable prospect that the debtor can become successful, so that greater economic benefits would be realized by preserving it as a going concern than would be achieved through liquidation then rehabilitation rather than liquidation is the correct choice.

Railroads, however, are in a special category, both because the public interest requires that they continue to operate, and because dismantling and liquidating them would ordinarily be economically wasteful, and would be unlikely to provide as great a return to their creditors as would their preservation as operating units. Congress has therefore precluded railroads from availing themselves of the "straight" bankruptcy liquidation alternative, but instead has enacted the special provisions of § 77 of the Bankruptcy Act for the rehabilitation of railroad debtors[3]. The Penn Central bankruptcy proceeding is a § 77 railroad reorganization proceeding.

Assuming it makes economic sense to keep the enterprise going—that is, assuming the value of its earning power is greater than the amount which would be produced by sale of its assets—reorganization of the enterprise is feasible. Re-

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[1] Chapters I through VII of the Bankruptcy Act.

[2] Chapter X of the Bankruptcy Act.

[3] As will be developed in the next section of this Opinion, § 77 of the Bankruptcy Act has been modified and supplemented, in the course of these proceedings, by enactment of the Regional Rail Reorganization Act of 1973 (RRRA) and its amendments.

organization is achieved through the mechanism of a Plan[4], which translates the value represented by the earning power

[4] A railroad reorganization plan must conform to § 77(b), which provides:

(b) "A plan of reorganization within the meaning of this section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character, or otherwise; (3) may include, for the purpose of preserving such interests of creditors and stockholders as are not otherwise provided for, provisions for the issuance to any such creditor or stockholder of options or warrants to receive, or to subscribe for, securities of the reorganized company in such amounts and upon such terms and conditions as may be set forth in the plan; (4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof; (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interests, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, the amendment of the charter of the debtor and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; and may include any other appropriate provisions not inconsistent with this section."

of the enterprise into a new set of securities, and distributes these new securities appropriately among creditors and other claimants, in discharge of the debtor's obligations. Valuation of the enterprise involves at least two exercises of judgment: determining what the earning power of the enterprise realistically is (based upon past performance, present circumstances, and supportable predictions of future events), and establishing the appropriate capitalization rate for converting the predicted future earnings into present value.

The design of the capital structure of the reorganized enterprise must be such that the debtor's earnings will support the new capital structure. The reorganized company must be reasonably likely to be able to comply with the requirements of the securities issued. That is, it must be reasonable to suppose that the reorganized company will be able to meet when due the payments required by the new debt securities, and that it will have sufficient earnings to enable it to pay dividends and grow, so that its equity securities will have value.

By definition, if the Debtor were able to pay off its existing debt obligations according to their terms, it would not be in bankruptcy. Thus, the new securities provided for in a reorganization plan inevitably represent substantial alterations in the rights of creditors and other claimants.

In a straight liquidation proceeding, the assets would be sold and the cash divided among the unsecured creditors, subject to priorities established by statute. All claims would be discharged, even though the proceeds from the sale of the Debtor's assets proved insufficient to pay all claims in full, or even left many claims unpaid altogether. By the same token, in a reorganization proceeding we are dealing with a finite

quantity of values (the total value of the ongoing enterprise, represented by the new securities, or cash plus new securities) to be distributed among creditors and other claimants. The essential requirement is that the distribution be fair and equitable, and in accordance with the absolute priority rule.

Under the absolute priority rule, all claims against the estate must be classified and ranked in accordance with the system of priorities established by law. The claims in each class must receive the fair equivalent of the rights lost through discharge, if there is to be any distribution to claimants of lesser rank. This does not mean that senior claimants must be paid in cash before junior claimants participate, nor does it mean that distributions to junior claimants must be made at later times than to senior claimants. But what is required is that the distributions to senior claimants must have value which is substantially equivalent to the value of the claim being surrendered, before claims of lower rank can be recognized.

Generally speaking, there are four classes of claims: claims of administration (*i.e.*, the costs and expenses incurred in conducting operations during bankruptcy), secured claims, unsecured claims, and equity interests. To the extent that a secured claim is not fully secured (that is, to the extent the assets securing the claim are worth less than the amount of the claim), it is treated as an unsecured claim. If the total amount of the claims against the estate exceed the total value of the estate, the estate is insolvent, albeit still reorganizable, and equity interests cannot be permitted to participate under the plan.

A § 77 Plan of Reorganization must be submitted to the Court for approval[5]. If approved as fair and equitable, and as complying with all legal requirements, the Plan must then be submitted to the vote of all who are entitled to participate in the Plan. If the vote is favorable[6], the Plan is then confirmed by the Court, and carried out. If one or more classes of participants reject the Plan, the Court will review the matter in light of the results of the voting, but the Court is empowered to confirm the Plan notwithstanding the negative vote, in the absence of changed circumstances, if it deems that course appropriate.

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[5] Section 77(c) establishes the standards for approval of a plan:

> "After . . . hearing, and without any hearing if no objections are filed, the judge shall approve the plan if satisfied that: (1) It complies with the provisions of subsection (b) of this section, if fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of such hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; (3) the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances provided for in subsection (c) paragraph (12) of this section, may be paid in securities provided for in the plan if those entitled thereto will accept such payment, and the judge is hereby given power to approve the same."

[6] Under § 77 voting is by amount of claim. A class accepts a plan if two-thirds of the total amount of claims voted are cast for acceptance.

If the Court initially disapproves the Plan, it is not submitted to vote; the Court may require that a new Plan be submitted, or may dismiss the proceedings[7].

The Penn Central Plan is now before the Court for approval. The Court is required to decide whether the Plan conforms to legal requirements, whether it is feasible and whether it is fair and equitable.

2. History of the Penn Central Reorganization

The Penn Central reorganization differs from the 'normal' railroad reorganizations of the past in many ways. The immediately apparent difference, of course, is the magnitude of the enterprise and the complexity of its financial structure; but these are only matters of degree. The really important differences in kind have become manifest during the course of the proceedings, and require some explanation, as a prelude to our examination of the proposed Reorganization Plan.

If a bankrupt railroad can be sufficiently revitalized so that it becomes income-producing again, it can be reorganized. In previous railroad reorganizations, the question whether the enterprise could be restored to profitability depended upon changes in the economic climate, or changes within the control of management (*e.g.*, cost reductions, increases in efficiency, etc.) The successful reorganizations of the past were generally achieved because a combination of changed economic circumstances and management improvements provided sufficient net income to support a scaled-down and stretched-out debt structure.

[7] Dismissal of a § 77 reorganization proceeding would presumably result in some form of liquidation of the enterprise, in further judicial proceedings similar to the equity receivership proceedings utilized before § 77 was enacted.

In instances where it proved impossible to achieve profitability, there were several alternatives. Merger into larger, profitable, railroads could sometimes provide a solution to the problem. Or, preservation of essential rail service could be achieved by selling major portions of the bankrupt railroad to other, profitable, carriers, and the remaining assets could be liquidated. Or, in rare instances, the bankrupt railroad could simply be shut down and liquidated, with only temporary and localized adverse consequences to the public.

In the case of Penn Central, however, it early became apparent that profitability could not be restored by means within the control of the Trustees or of this Court. Very substantial changes in the regulatory climate, both procedural and substantive, were required, and sweeping changes in work rules and other aspects of labor-management relations bearing upon productivity. Some of these changes could theoretically have been brought about without further legislation by Congress. For example, greater flexibility in rate-making, more expeditious and more equitable divisions proceedings, and expedited proceedings for abandonment of unprofitable lines, were theoretically attainable through the actions of regulatory agencies.[8] And the labor-management

[8] While theoretically possible, this was a practical impossibility. For example, when a district court held that environmental impact statements were required in abandonment proceedings, the ICC declined to hold hearings on all abandonment applications until the Supreme Court decided the appeal. And a major divisions dispute which had been in litigation for 15 years was dismissed because the record was stale.

issues were theoretically susceptible of resolution through the mechanisms provided by the Railway Labor Act.[9] But the changes needed here would have ramifications far beyond the Penn Central system itself; important issues of national transportation policy were at stake. Hence, as a practical matter, congressional action was essential.

Thus, in the case of Penn Central, restoration of profitability which would render reorganization feasible was dependent upon governmental action. And many of the alternatives to independent reorganization which had provided acceptable solutions in other railroad reorganizations were simply not available to Penn Central because of its size, the magnitude of its problems, and the importance of its rail service to the nation's economy. For example, merger with another railroad was out of the question, and cessation of operations was unthinkable.

The other major distinction between the Penn Central reorganization and earlier reorganizations, namely, the accumulation of huge amounts of unpaid administration expenses, is a product of the passage of time before legislative action occurred, and the nature of the legislative actions taken.

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[9] When the lengthy procedures mandated by the Railway Labor Act have been exhausted without successfully resolving the controversy, management is free to promulgate the work rule changes, and labor is free to strike. Once that position is reached, as it was in this case in February 1973, and a strike is called, as it was in this case, the public interest in avoiding disruptions in rail service inevitably leads to a legislative solution, as it did in this case. On February 9, 1973, the President signed a Senate Joint resolution abrogating the Trustees' work rule changes and mandating continued operation under the old arrangements while Congress addressed the overall problems of the rail industry.

The historical review which follows shows how these problems developed, and puts in chronological perspective the genesis of the proposed Plan of Reorganization.

From the first day of the Penn Central reorganization, June 21, 1970, the full powers of § 77 were brought to bear. Pursuant to various Orders of this Court, the Trustees suspended all tax payments, leased line rents, and debt service, and all creditors' actions against the estate were stayed.[10] Notwithstanding the substantial reduction in expenses which resulted from these actions, there was inadequate cash available to continue operations. A federal guarantee provided $100 million from the issuance of trustees certificates and the entire amount was used to pay operating expenses during the early months of the case.[11]

While the immediate cash shortage problem was working its way to resolution, the Trustees endeavored to cut costs and increase demand for the Debtor's services. They made some progress and predicted additional progress. Yet, on February 10, 1971, the Trustees reported to the Court:[12]

> Penn Central is presently locked by circumstances beyond its managerial control into a situation which had best be recognized *now* as completely precluding viability unless certain contraints are removed, or other arrangements are made to compensate for their effects. (Emphasis in original).

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[10] Order No. 1.

[11] *In re Penn Central Transp. Co.*, 325 F. Supp. 302 (E.D. Pa. 1971).

[12] Doc. No. 857.

The Trustees identified four conditions for viability: (1) elimination of losses on passenger service; (2) rationalization of freight plant through elimination or subsidy of uneconomic lines; (3) more flexible rate and division procedures; and (4) improved labor productivity. The Trustees properly observed with respect to these conditions:

> It is appreciated that the conditions to Penn Central's viability are hard and introduce factors that go far beyond the normal boundaries of railroad reorganization proceedings under § 77. But in the firm opinion of the Trustees, nothing less has a chance.

In September of 1971, the Trustees filed a further report. Progress had been made in improving the internal operations of the railroad, and the enactment of the Amtrak statute had resulted in a substantial diminution, but not elimination, of the estate's non-commuter passenger service losses[13]. Between September of 1971 and January of 1972, the Trustees completed a series of economic studies, and in February of 1972, reported their conclusion that unless the conditions of viability were substantially met by the end of 1973, the estate could not be reorganized[14]. On the positive side, the Trustees also reported that their studies indicated that there was within the 20,000 route miles of the Penn Central system a core freight railroad of about 11,000 miles which carried approximately 80% of the traffic, and which would be a viable economic entity if certain labor practices were changed. However, the projected revenues of this core railroad would be inadequate to absorb the continuing losses under the Amtrak contract and from commuter operations. In sum, at the

[13] Doc. No. 1828.

[14] Doc. No. 2637.

very early stages of the case the basic question was clearly drawn. Would the private and public institutions whose cooperation was essential to the attainment of the conditions of viability embrace the proposal for an 11,000-mile core railroad?

On April 1, 1972, the Trustees filed a proposal for a Plan of Reorganization which spelled out in more specific terms the justification for and the method of implementing the core railroad concept[15]. In October of 1971, the Trustees again reported their belief that the core railroad concept was appropriate but suggested increasing the size of the core to 15,000 miles[16]. The reasons for this change were that reduction to the 11,000-mile core would not generate sufficient cash to pay the labor severance expenses which would flow from the concomitant reduction of the work force; and that the ICC's procedures for abandonment of rail lines would be inadequate to handle, within a reasonable time, the abandonment applications which would be necessary to reduce the system to the 11,000-mile core. The October 1972 report also contained an analysis by the Trustees of a variety of measures, short of outright nationalization, which would be necessary if the core system and the conditions of viability were not attained.

In Febraury of 1973, the Trustees again, eschewing nationalization, but apparently reconciled to the inevitability of delay before the conditions of viability could be achieved, concluded that plant improvement in the range of $600 to $800 million would be necessary and that the only source of

[15] Doc. No. 3033.

[16] Doc. No. 4428.

this financing was the United States. Absent such capital investment even a sharply reduced freight system would not be viable[17].

The dilemma facing the Trustees was that each day the estate operated additional deferred charges were accruing. Time was expensive. High administration expenses gave rise to two concerns. First, the potential economic viability of any railroad which might emerge was diminished by each increase in high-priority obligations. Second, the continued accrual of administrative expenses would soon reach the point of being an unconstitutional impairment of the rights of the estate's creditors.

During this early period this Court resolved virtually every question presented to it in such a way as to give the Trustees an opportunity to preserve the railroad. After all, that is the purpose of § 77. The problems came to a head in early 1973, as the April 1, 1973 deadline for the filing of a Plan of Reorganization approached. On March 6, 1973, I filed Memorandum and Order No. 1137, granting an extension of time for filing a Plan, but directing the Trustees, not later than July 1, 1973, to file either a Plan of Reorganization or their proposals for liquidating the enterprise. In the course of that Memorandum I made the following observations[18].

> It has long been apparent that the particular problems of Penn Central cannot be completely divorced from problems of national transportation policy. Railroads are, after all, a regulated industry. However unappealing may be the notion that a regulated industry can become

[17] Doc. No. 5053.

[18] *In re Penn Central Transp. Co.*, 355 F. Supp. 1343, 1345-46 (E.D. Pa. 1973).

bankrupt, the Trustees' efforts to rehabilitate the Debtor are circumscribed by existing statutes and regulations. To the extent that these statutes and regulations, whether in the area of abandonment, tariffs, or resolution of labor disputes, preclude the exercise of self-help in achieving profitability, the legislative and executive branches of government must be looked to for solutions, if solutions are to be forthcoming.

And this is as it should be, for it is those branches of government which should determine whether the kind of railroad which could emerge from a private income-based reorganization would be consistent with long-range goals of national transportation policy. Such matters as how much rail transportation should be provided, how much competition among railroads is desirable in the Northeast, and the extent of public interest in maintaining rail service which cannot be operated profitably, are clearly beyond the province of the Trustees, the other parties to this reorganization, and this Court.

I take judicial notice of the fact that the legislative and executive branches are now addressing themselves to these problems. . . . It would obviously be premature, therefore, for this Court to make final determinations as to the future course of this reorganization proceeding on the basis of the existing legislative and regulatory framework. The legal and constitutional rights of the parties to this reorganization should be evaluated in the light of whatever changes Congress sees fit to enact.

By the same token, however, this Court cannot ignore the realities of the Debtor's situation. On the basis of the record to date, it appears highly doubtful that the Debtor

could properly be permitted to continue to operate on its present basis beyond October 1, 1973.

In July of 1973, the Trustees submitted a Plan of Reorganization which contemplated termination of rail operations and liquidation of rail properties unless arrangements were made with public authorities to assume interim losses.[19] That Plan contemplated that public agencies, and other carriers, would have preference in the bidding for the rail properties, and that service would be continued under interim operating agreements until ICC and Court approvals of any purchases could be obtained. Non-rail real estate was to be spun off into and managed by a new real estate company. Finally, after consummation of the sales of the rail property, the remaining rail assets would be conveyed to a real estate company. When and how the creditors would be compensated was left open. The Commission concluded, after extensive hearings, that the Trustee's Plan was not a "plan" within the meaning of § 77 because it did not provide concretely for the continuation of rail services.[20] The Commission specifically declined to take into account the evidence before the Commission relating to the unconstitutionality of continued loss operations, holding that that issue was exclusively for the courts. The Commission referred to the legislation then under preliminary consideration in the Congress as perhaps the appropriate solution to Penn Central's problem.

In order to trace the efforts of the Congress to formulate a response to Penn Central's financial plight and that of the other bankrupts in the Northeast portion of the country, it is

[19] Doc. Nos. 5926, 5927.

[20] 347 ICC 45 (1973).

necessary to return to February of 1973. One step in the Trustees' efforts to achieve their conditions of viability was the implementation of far-reaching work rule changes which, after exhaustion of the Railway Labor Act procedures, were promulgated on February 8, 1973. The United Transportation Union immediately called a strike. With the trains at a standstill, Congress enacted Senate Joint Resolution 59 on the same day and the President signed the resolution into law on the next. As a result of this congressional action, the work rule changes were suspended and service resumed promptly. The Congress also directed the Department of Transportation to file a comprehensive report setting forth the Department's views "for the preservation of essential rail transportation services in the Northeast section of the country." The Department and the ICC filed reports on March 26, 1973, which by and large agreed that the conditions of viability set forth by the Trustees were correct, and recommended procedures for creating a new core freight system. However, both the Department and the Commission saw a broader need, the consolidation of the Northeast bankrupt carriers into one or more new rail systems.

From March of 1973 to the end of that year, the Congress was engaged in the process of drafting and enacting legislation designed to remedy the Northeast rail crisis. On January 2, 1974, the Regional Rail Reorganization Act of 1973 (RRRA) became law.[21]

The broad outline of the RRRA is relatively straightforward. The bankrupts would operate under the aegis of the Reorganization Courts for a further period, approximately 20 months, during which time the United States Railway

[21] 45 U.S.C. §§ 701-794.

Association (USRA), a new corporate entity created under the Act, could complete the task of planning the new rail system or systems, and deciding what portions of the Northeast bankrupts' rail facilities should be conveyed to Consolidated Rail Corporation (ConRail), the company which was to take over the system which USRA designed. The statute contemplates a system which, while not profitable immediately, would ultimately be a profitable private sector carrier. In return for the properties conveyed to ConRail, the bankrupts were to receive common stock and other securities of ConRail in amounts commensurate with the value of the properties conveyed. The Act also created the Special Court, a three-judge panel selected by the Judicial Panel on Multidistrict Litigation, to rule on the adequacy of USRA's valuation of the conveyed property and the value of the stock of ConRail which was given in return.

Before a debtor in a § 77 reorganization could be subjected to the regimen of the RRRA, the presiding reorganization court had to find the debtor was not reorganizable under § 77, or, if it was, that the public interest would be best served by reorganization under the RRRA. With respect to Penn Central and a number of the Secondary Debtors, I concluded that they were not reorganizable under § 77.[22] As to certain other Secondary Debtors, I found that, although they were reorganizable under § 77, the public interest would best be served by their reorganization under the RRRA.[23] Shortly after these preliminary decisions were handed down, a three-judge court (of which I was a member) held the RRRA unconstitutional.[24] Although that Court found a number of the

[22] *In re Penn Central Transp. Co.*, 382 F.Supp. 831 (E.D. Pa. 1974).

[23] *In re Penn Central Transp. Co.*, 382 F.Supp. 851 (E.D. Pa. 1974).

[24] *Connecticut Gen. Ins. Corp. v. United States Ry. Ass'n*, 383 F.Supp. 510 (E.D. Pa. 1974), *rev'd sub nom., Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974).

plaintiffs' key contentions premature, it concluded that the failure to provide a mechanism for compensating the estates for unconstitutional erosion between the time of the passage of the Act and the conveyance to ConRail rendered the Act unconstitutional.

The next sequence of judicial review occurred pursuant to the RRRA. This Court found that the processes of the Act were not "fair and equitable," and an appeal was taken to the Special Court.[25] At about the same time the three-judge court's judgment was appealed directly to the United States Supreme Court.

The Special Court reversed this Court's decision on the grounds that unconstitutional erosion of the estates, if any, would be compensable under the Tucker Act.[26] Shortly thereafter, the United States Supreme Court reversed the three-judge court's finding that the Act was unconstitutional.[27] The Supreme Court's two essential findings were (1) that the securities of ConRail were a constitutional medium of exchange for the properties conveyed, because the Tucker Act provided a remedy to satisfy any difference between the constitutional minimum value of the property conveyed and the value of the ConRail securities, and (2) that any unconstitutional erosion of the estates which occurred prior to the conveyance of the properties to ConRail could also be compensated under the Tucker Act. The upshot of all this was that the RRRA, as supplemented by the potential Tucker Act remedy, was held constitutional.

[25] *In re Penn Central Transp. Co.*, 382 F.Supp. 856 (E.D.Pa. 1974).

[26] *In re Penn Central Transp. Co.*, 384 F.Supp. 895 (Special Ct. 1974), *cert. denied*, 420 U.S. 922 (1975).

[27] *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974).

The Preliminary System Plan was filed on February 27, 1975, and the Final System Plan on July 26, 1975. The end result of the planning process was that the service and trackage of the competing Northeast bankrupts was trimmed somewhat and consolidated into one system to be operated by ConRail.

Throughout this period, the parties faced the problem of maintaining rail services until the conveyance date. There was almost constant litigation in the reorganization courts concerning the implementation of the § 213 grant program and the § 215 improvement program, the statutory mechanisms for providing cash necessary to continue rail operations.[28] That litigation aside, the Trustees and the respective Federal agencies joined in the cooperative effort to insure that the transfer of the Debtor's properties to ConRail went smoothly.

Before the conveyance of the properties took place, however, Congress made a number of important amendments to the RRRA. Of primary importance to the consideration of the Plan are § 306 of the Act, which authorized the issuance of Certificates of Value, and the § 211(h) loan program.[29]

Section 306 Certificates of Value are interest-bearing USRA securities backed by the full faith and credit of the United States, redeemable on December 31, 1987 (but potentially callable earlier). The certificates are a pledge of the United States to make up with cash any difference between the net liquidation value of the assets conveyed by Penn Central and the other Northeast bankrupts, and the value of ConRail's stock and other benefits conferred on the estates by the RRRA. Recourse to the Tucker Act would, however, be

[28] *See, e.g., In re Penn Central Transp. Co.*, 395 F.Supp. 567 (E.D. Pa. 1975); *In re Penn Central Transp. Co.*, 400 F.Supp. 920 (E.D. Pa. 1975).

[29] 45 U.S.C. §§ 746, 721(h).

necessary if the Special Court should find that the constitutional minimum value of the assets conveyed exceeds the net liquidation value of the assets.

As the conveyance date approached, it became clear to all that even after all funding provided under §§ 213 and 215 was exhausted, Penn Central's payables would far exceed its receivables as of the date of conveyance. The situation was potentially tantamount to a second bankruptcy, since ConRail was not to assume any liability for Penn Central's pre-conveyance obligations. And ConRail's operations might be adversely affected if the bills remained unpaid. Section 211(h) was enacted to remedy this situation. It created a mechanism by which ConRail borrowed from USRA in order to pay certain classes of the Debtor's payables. In turn, the estate was obligated to recognize as a current cost of administration the amount of § 211(h) funds expended by ConRail on the estate's behalf.

On April 1, 1976, the Debtor's rail properties designated in the Final System Plan were conveyed to ConRail. Of the retained rail lines, some are being operated under RRRA-funded subsidy agreements with state and local governmental entities.

As a consequence of all this, the Debtor's estate now consists of real estate and other investments not acquired by ConRail, plus the eventual right to receive ConRail securities (backed by USRA Certificates of value) in exchange for the Debtor's rail assets conveyed to ConRail.

B. SUMMARY OF THE PLAN

1. Introduction

The presence of huge amounts of unpaid administration claims (represented in large part by the claims of the United States Government, for which Congress has mandated the highest possible priority) and the unanswerable questions concerning the amount and timing of the receipt of the consideration for the rail properties conveyed to ConRail, have greatly compounded the difficulties inherent in fashioning a Plan of Reorganization of this magnitude. In my 1974 Opinion dealing with the so-called "180-day" issues under the RRRA, I had occasion to anticipate (but not resolve) these problems:

> Another problem relating to valuation is the lack of any mechanism for establishing a relationship between the values to be assigned to the rail properties conveyed, and the valuation of the interest of secured creditors holding liens against those properties. There are several facets to that problem. In the first place, the timing is off. In determining whether a plan of reorganization is fair and equitable, it is necessary to determine the extent to which particular groups of creditors are secured, and the value of their respective securities, so as to be sure that they will receive equivalent value before any junior classes of claimants participate. Since the exchanges under RRRA would be between ConRail and the Debtor's estate, rather than the creditors, the problem of later recognition of the correct treatment of the creditors in a reorganization plan would be rendered quite difficult.
>
> Moreover, the valuation of the property for sale to ConRail might very well not be on a basis which would permit rational allocation of the consideration on a segment-by-segment basis for purposes of later assigning lien values. And that difficulty would itself be greatly magnified by the fact that ConRail will presumably be made up of parts of various existing railroads, blended together in a smaller system designed to handle the traffic now being handled by several different railroads.
>
> A further difficulty with the statute is the lack of precision in defining what 'other benefits of the Act' are to be taken into account as part of the purchase price for the rail properties conveyed to ConRail.

In re Penn Central Transp. Co. (180-Day Decision Under § 207(b)), 382 F. Supp. 856, 865 (E.D. Pa. 1974). The Plan now before the Court is the product of the Trustees' Herculean and, in my judgment, successful, efforts to surmount these difficulties.

The problems would be easily resolved if the value of the assets remaining in the Trustees' hands after the conveyance to ConRail were sufficient to satisfy all claims against the estate. Unfortunately, the facts are otherwise. The assets remaining on hand are valued at almost $1.85 billion, but the principal amount of all claims against the estate totals more than $3 billion. Therefore, any reorganization plan which is to be consummated before 1987 (the anticipated conclusion of the Valuation Case) must distribute securities based in part upon the anticipated proceeds from the Valuation Case, and must also take into account the correlative, albeit theoretical, risk that there will be no proceeds.

The assets remaining after conveyance to ConRail fall into two principal categories: (1) Penn Central's ongoing, successfully operating, non-railroad business enterprises, principally consolidated in the Pennsylvania Company (Pennco);

and (2) a variety of real estate and other investments. The key business judgment reflected in the Plan is that Pennco is a sound company with growth potential, and that it is in the best interests of all concerned to make Pennco the nucleus of the reorganized company. The soundness of this business judgment is amply supported in the evidentiary record, and is unquestioned.

The Plan contemplates that most of the other assets (herein referred to collectively as the "retained assets") will be liquidated in an orderly fashion during the next 10 years pursuant to an Asset Disposition Program. This is a very detailed and carefully constructed plan of liquidation, and there is reasonable certainty as to the amount and timing of the fruits of that program.

Pursuant to the conventional reorganization process outlined in Section II-A above, the first step is to arrive at a value for Pennco and the other retained assets. The next step is to determine what claims are secured by those assets, and in what amount; this step includes applying marshalling principles. The final step is to establish a feasible capital structure and to design a fair and equitable scheme of distribution. It is at this final step that the Valuation Case must be taken into account.

The Trustees have integrated the known values of Pennco and the retained assets with the unknown value of the proceeds from the Valuation Case in two ways: First, the various securities to be issued under the Plan are related primarily, and in some cases exclusively, to either the Asset Disposition proceeds, the value of the reorganized company, or the proceeds of the Valuation Case. Second, in determining an appropriate distribution scheme, the Trustees made

two essential assumptions: (1) that the Debtor is solvent; and (2) that each secured creditor has a lien upon assets equal in value to the amount of his claim (principal and interest). If the Valuation Case should produce a very small recovery, the assumption of solvency would be incorrect, and the assumption of full security would be incorrect in many instances. But if a more favorable result is achieved in the Valuation Case litigation, both assumptions would be clearly correct. Since the record does not permit a finding of insolvency, and indeed it seems more probable than not that the estate is solvent, I am satisfied that the Trustees' assumptions represent the proper course of action.

The Plan provides for the issuance of securities in various combinations designed to recognize the differing characteristics of each class of claims, and to achieve a fair and equitable distribution of both the known values and the risks and potential rewards of the Valuation Case litigation.

The new securities to be issued under the Plan consist of four series of secured notes—A through D; Series E unsecured notes; two series of general mortgage bonds—A and B; preference stock; common stock; and certificates of beneficial interest (CBI). In addition, the reorganized company will assume the outstanding trustees certificates (due in 1986) which will have a first lien on all of its assets.[30] Administration claimants receive the secured notes or a combination of cash and secured notes; secured claimants receive the so-called "10-triple-30" package 10% cash, 30% mortgage bonds, 30% preference stock, and 30% common stock) unsecured creditors receive a combination of CBIs and common stock; and the Penn Central Company, the sole owner of the Debtor's stock, receives common stock (10% of the total).

[30] The Trustee's certificates in default will be paid on consummation.

Two of the securities, the Series B general mortgage bonds and the preference stock, are convertible to common stock under certain circumstances.

The rights of the respective securities to cash from the Asset Disposition Program and other sources are rather complex. Therefore, in connection with the discussion of the securities, frequent reference will be made to the Trustees' 11-year cash forecast.[31] Having a reasonable estimate of when the securities are scheduled to be paid makes it easier to understand the complicated rights of each security in relation to the other securities issued under the Plan.

2. New Securities and Their Distribution

Series A Notes: These notes are an escape valve to be issued only if needed to pay approximately $56 million now due on the defaulted trustees certificates or to make scheduled principal payments on Series B notes. Cash is already on hand to pay the defaulted trustees certificates and cash flow should certainly be adequate to meet the payments on the Series B notes. There is, as the SEC Report has observed, therefore no need to consider the Series A notes in this analysis.

Series B Notes: Approximately $350 million face amount of these notes are to be issued to satisfy the claims of the United States arising from its advances in that amount under § 211(h) of the RRRA. All interest on these notes is deferable until

[31] Exhibit to affidavit of Ernest Varalli, Doc. No. 14434. Neither Mr. Varalli's cash forecast nor the figures used by the Court contemplate the issuance of any C-2 notes. *See* Section II-J for discussion of the claims which may be satisfied with C-2 notes. In discussing the various lien priorities of the securities issued under the Plan, generally no mention is made of the liens of the Trustees Certificates due in 1986 or Series A notes because it is contemplated that the Trustees Certificates will be paid on maturity and that no A notes will be issued.

December 31, 1987, when the principal and accrued interest are payable without any provision for extension. Interest will be compounded semi-annually at a rate slightly above the Treasury's cost for 10-year borrowings. The Trustees estimate the rate will be 7½%. B notes will have a lien on the reorganized company's assets subject only to the lien of the 1986 trustees certificates and any outstanding Series A notes, and will also have a similar lien on the proceeds of the Valuation Case. Moreover, between 1978 and 1981 the outstanding principal of the Series B notes must be reduced by at least $80 million and under certain circumstances an additional, but limited, reduction of principal must be made. If the Valuation Case concludes before the B notes mature, the notes become payable to the extent that funds are available. The net effect of the Series B notes is to postpone payment of most of the priority claims of the United States Government until termination of the Valuation Case, permitting the use of cash and the proceeds from the Asset Disposition Program to satisfy the claims of other creditors.

The Plan contains an important covenant which protects the B notes. Pennco may not dividend to the reorganized company more than 50% of its consolidated net earnings. As a result, until the Series B notes are paid, there will be a substantial cash buildup in Pennco. This convenant insures the adquacy of the security which will be available to satisfy the Government first lien on the reorganized company.

The cash flow forecast contemplates aggregate payments on B notes of $100 million by 1981 ($20 million more than the amount required). If this forecast is correct, at maturity the total outstanding obligation on the B notes will be $579 million, consisting of $249.8 million in principal and $329.2 million in accrued interest.

Series C, D, and E Notes: These notes together with some cash, will be distributed to state and local tax authorities to satisfy pre- and post-petition taxes, including interest but excluding penalties, totaling $451.5 million. Forty-four percent of each tax claim will be paid within two years: 26.4% in cash at consummation, and 17.6% in Series D serial notes which mature during that period. The remaining 56% of each claim will be paid with a combination of Series C-1 notes, and D term notes which mature in December of 1987. As will be more fully described below, under certain circumstances, the principal of the C-1 notes will be converted to either D term notes or E notes, or a combination of both.

The original allocation of D term notes and C-1 notes depends on the extent to which the tax claims accrued on conveyed or retained property. Basically, tax claims are segregated into two classes: (1) real estate taxes assessed on conveyed property; and (2) real estate taxes assessed on retained property plus all other taxes. C-1 notes are distributed in an amount equal to 56% of the total tax claim on conveyed property and D term notes are distributed in an amount equal to 56% of the total tax claims attributable to retained property. By way of illustration, assume a tax claim of $40 on conveyed and $40 on retained assets with $10 in accrued interest on each. The tax claimant receives (subject to certain rounding principles) $26.40 in cash; $17.60 in Series D serial notes; $28 in C-1 notes; and $28 in D term notes. In the aggregate, $131.2 million in C-1 notes and $121.6 million in D term notes will be issued.

Both the D term and serial notes are general secured obligations of the reorganized company, carry a 7% interest rate payable semi-annually, and have a claim to the Valuation Case proceeds subordinate to the B and C notes. Approximately $79.5 million in D serial notes will be issued, one-half payable on December 31 of 1978 and the remainder on December 31, 1979. Payment of the principal and interest of the D serial notes is to be from the asset disposition proceeds, subject only to the prior claim of the B notes. The maturity date of the $121.6 million in D term notes which are to be issued originally under the Plan is December 31, 1987, but if these notes are not redeemed on that date, they are automatically extended for five years with pro rata redemption in each year of the extension period. Between consummation and the redemption date, $85 million in interest will be paid on the D term notes.

C notes will be issued in two series, C-1 and C-2. C-2 notes are reserved for Class G creditors.[32] Except for an important conversion provision applicable only to the C-1 notes, C-1 and C-2 notes have the same terms. Both series mature on December 31, 1987, and interest, which is deferred until maturity, accrues at 8% compounded annually. Although the C notes are not general obligations of the reorganized company, the interest and principal of the C notes, in that order, have a claim against the Valuation Case proceeds subject only to prior claims of the B notes. Any portion of the interest or principal of the C notes which is not paid from Valuation Case proceeds is extinguished.

There is, however, a rather complex conversion scheme which applies only to the principal of the C-1 notes which may remain outstanding after application of Valuation Case proceeds. Depending on the exact amount of the Valuation Case proceeds, the principal of the C-1 notes will convert to

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[32] *See* Section II-J for a discussion of the claims that may be satisfied with C-2 notes.

either D term notes, E notes, or a combination of both. The table below shows the treatment of principal and interest of C-1 notes for various amounts of 1987 Valuation Case proceeds and comparable 1976 base values.

Valuation Case Proceeds 1987	*Base Values 1976*	*Treatment of C Notes* (in millions)
$447 or less	$181 or less	All C-1 interest cancelled All C-1 principal to E notes
$447-$578	$181-$234	All C-1 interest cancelled Mix of D term and E notes
$579	$234	All C-1 interest cancelled All C-1 principal to D notes
$579-$731	$234-$296	C-1 interest paid to extent Valuation Case proceeds exceed $579 All C-1 principal to D notes
$732-$862	$296-$349	All C-1 interest paid Some C-1 principal paid and remainder converted to D notes
$862	$349	All C-1 interest and principal paid

If the Valuation Case proceeds (1987) are between $447 million and $578 million, the allocation of D term notes and E notes is computed as follows: C-1 notes convert to E notes in an amount equal to the amount of B notes outstanding after application of the Valuation Case proceeds, and the balance of the C-1 notes convert to D term notes. By way of illustration, assuming $500 million in Valuation Case proceeds (1987), the balance due on B notes is $79 million and that amount of C-1 notes is converted to E notes with the remaining principal of the C-1 notes, $52.2 million ($131.2 million less $79 million), converted to D term notes.

The integration of D term notes issued as a result of conversion of C-1 notes with the original D term notes requires some fine tuning. If the Valuation Case is concluded before

December 31, 1987, and some or all of the C-1 notes are converted to D term notes, the conversion issue of D term notes will share *pari passu* with the original D term notes and be subject to the automatic five-year extension. However, if the Valuation Case is concluded after December 31, 1987, but before December 31, 1991, the D term notes issued in conversion of C-1 notes will be payable in equal amounts so as to retire the entire conversion issue by the end of 1992. The last but, it is hoped, unnecessary provision of the conversion scheme is that if the Valuation Case is concluded on or after December 31, 1991, the principal of the C-1 notes is immediately payable in cash on the later of December 31, 1992, or the conclusion of the Valuation Case.

Series E notes are fully subordinated unsecured obligations of the reorganized company which do not bear interest and mature on the later of December 31, 1993, or six years after the conclusion of the Valuation Case. In the event any E notes are outstanding on the maturity date, there is an automatic 10-year extension. E notes do have the benefit of a cumulative redemption covenant under which a maximum of $30 million a year in E notes may be retired. Payments will be made on the E notes only if cash is available, and then only to the extent the earnings of the reorganized company, subject to certain adjustments, exceeded $50 million in the previous year.

General Mortgage Bonds: Two series of general mortgage bonds—Series A and Series B—are to be distributed in various combinations to secured creditors to satisfy 30% of each secured creditor's claim. The mortgage bonds have the benefit of a complicated set of priorities as to the funds available to make principal and interest payments. For present purposes, all that need be noted is that the bonds are subordinate to the notes as to lien priority and cash availability,

and as between the two series, the principal and interest of A bonds must be paid before Asset Disposition proceeds may be used to service the B bonds. Both series bear a 7% per annum interest rate beginning on April 1, 1981, but if cash is not available, the interest is deferred and compounded semi-annually. The maturity date for the bonds is December 31, 1987, but if the Valuation Case is not concluded as of the maturity date, there is an automatic 10-year extension. With respect to the Valuation Case proceeds, the B bonds are paid first, but in the event that the Valuation Case proceeds are inadequate to satisfy the B bonds, any remaining amount of principal is converted into common stock at the same number of shares per thousand dollars as the unsecured creditors received per thousand dollars of claim (estimated to be 11.40 shares per thousand dollars). On the other hand, A bonds are general obligations of the reorganized company, and if the Valuation Case proceeds are inadequate to satisfy the A bonds, they must be paid either at maturity or pursuant to the terms of the automatic extension. The cash forecast indicates that A bonds will be retired easily from the Asset Disposition Program.

Early redemption of the mortgage bonds is controlled by two separate provisions of the Plan. Mortgage bonds have a very high claim to Asset Disposition proceeds, and to the extent all prior claims to Asset Disposition proceeds are met in any given year, there will be mandatory early redemption of the mortgage bonds. However, the Plan puts a limit on the mandatory redemption feature by establishing the following maximum percentages of the total amount of mortgage bonds which may be redeemed as of any given year: 1978—33.34%; 1979—44.45%; 1980—55.56%; 1981—66.67%; 1982—77.78%; 1983—88.89%; 1984—100%. Because A bonds must be paid first, the actual A bond redemption

limitation for 1978 is 55%, with an additional 18.3% cumulatively thereafter until all the A bonds are redeemed. If the cash forecast is correct, $304.9 million of the $344 million in A bonds will be paid by 1980 and the remainder will be paid by 1983, and $25.1 million in B bonds will be paid in 1983 and most of the accruing B bond interest will be paid through 1987.

Preference Stock: Secured creditors will receive non-dividend preference stock, computed at a ratio of 1 share per $20 of claim, for 30% of their claim. Of the 30 million preference shares authorized, it is expected that 28.36 million will be issued to secured creditors. Each share will have two-thirds of a vote, and the aggregate preference shares will represent 45% of the voting power of the reorganized company. Since secured creditors will also receive 12.73 million shares of common stock, which has one vote per share, the secured creditors as a class will have 75% of the voting power.

Beginning in 1981, annual redemption of 5% of the preference stock at $20 per share is required if an income test is met. If the income test is met but cash is not available, the redemption obligation carries over. The cash forecast does not indicate that any preference stock will be redeemed. However, the forecast does show that the income test would permit redemption of $25.3 million of preference stock in 1981. Since no estimate of Pennco's earnings past 1981 is available, additional redemptions cannot be predicted. Unredeemed preference stock will have a claim against the proceeds of the Valuation Case subordinate to the Series B, C, and D notes and the Series B bonds. If the Valuation Case proceeds are not adequate to redeem the preference stock,

preference stock automatically converts to common at a ratio of 1 share of common for each 6.5 of preference.

Certificates of Beneficial Interest: It is estimated that $213.2 million in Certificates of Beneficial Interest will be issued to satisfy 30% of the unsecured claims. The certificates are payable only out of the Valuation Case proceeds which are available after the satisfaction of the secured notes, general mortgage bonds and preference stock.

Common Stock: Of the 40 million shares of common stock which are authorized under the Plan, 23.153 million are to be originally issued: Secured creditors—12,734,562 shares (55%); unsecured creditors—8,103,813 shares (35%); and Penn Central Company—2,315,375 shares (10%). However, due to the provisions of the Plan which preclude the issuance of fractional shares the stock issued on consummation will be somewhat less than the shares allocated to the class. The difference in shares between the full allocation and the amount issued will be sold to the public within one year, and the proceeds distributed to those who would have received the fractional shares. Conversion of the full amount of B bonds and preference stock would require issuance of 6.9 million additional shares of common. Any Valuation Case proceeds in excess of the amount necessary to satisfy Series B, C, and D notes, Series B mortgage bonds, preference stock, and certificates of beneficial interest, will of course benefit the common stockholders. Mr. Guest, the Trustees' investment advisor, has opined that the reorganized company may be able to pay modest dividends on the stock during the 1978-87 period and that it would be wise for the directors to declare such dividends.

The first Board of Directors will be selected from persons representing the Institutional Investors, the PCTC Indenture Trustees, the secured banks, the New Haven Trustee, unsecured creditors, the Penn Central Company and two designated officers of the reorganized company. As the staggered terms expire, the shareholders will elect replacements. Beginning on the sixth anniversary of the consummation of the Plan all directors will be elected for one-year terms by cumulative voting. Thus, the voting shareholders will have substantial control over the choices to be made by the reorganized company.

In sum, the Plan creates a set of securities which weave an intricate series of claims against the three asset groups. Cash and Asset Disposition Program proceeds are distributed to the United States, tax claimants, and secured creditors. Valuation Case proceeds are subject to the essentially same priority scheme, the United States, tax claimants, and the B bonds of secured creditors, and any remaining proceeds are available to satisfy the secured creditors' preference stock, then the CBI's of the unsecured creditors, and ultimately the shareholders. The reorganized company is to be owned by the secured creditors, the unsecured creditors and Penn Central Company, but subject to all of the liens created by the Plan.

3. Scope of the Plan

The prior discussion has proceeded, for the purpose of clarity, as if there were only one debtor, Penn Central Transportation Company. This, of course, is not the case. Only about one-half of the rail lines of the Penn Central system were actually owned by Penn Central. The other half were leased to Penn Central under long-term leases by so-called leased line lessors. Fifteen of

these lessor companies have filed § 77 petitions as part of the Penn Central proceedings and are referred to as the Secondary Debtors. For each of the Secondary Debtors, the Penn Central Trustees have proposed a Plan. Subject to a number of exceptions, the treatment of the bondholders of the Secondary Debtors is the same as that of the bondholders of Penn Central. Stockholders are, however, treated quite differently. The respective leases between Penn Central and the Secondary Debtors require Penn Central to pay as rent certain dividends to the public stockholders of the Secondary Debtors. For the purposes of the Plan, the annual stock dividend payment is capitalized at a rate of 10 and the resultant amount is treated as a secured claim which receives the same distribution as other secured creditors, the 10-triple-30 securities package. Implementation of the Penn Central and Secondary Debtor Plans would have the effect of placing control of the Secondary Debtor's assets, including their subsidiaries, in the reorganized company. The cash forecast assumes that all of the Secondary Debtors' Plans will be effectuated. A major purpose of proposing Plans for the Secondary Debtors at this time is to achieve a substantial simplification of the debt and equity structure of Penn Central and its related lessor companies. Consummation of all the Plans would eliminate more than 50 separate mortgages of Penn Central and the Secondary Debtors, and the outstanding stock of Penn Central Company and the Secondary Debtors. In sum, the Plan would replace the complex debt and equity structure of Penn Central and the Secondary Debtors with the comparatively streamlined and simple debt and equity structure of the reorganized company which is described above.

There is another group of lessors which are not in bankruptcy. The Trustees originally appeared to be including these

companies under the Plan and treating their debt and equity interests substantially the same as the Secondary Debtor bondholders and equity holders. Later, the Trustees clarified their position as being merely an offer by the Trustees to settle all outstanding accounts with the lessors on the terms mentioned. Failing prompt acceptance, settlement negotiations were to be initiated. To date, no such settlements have been presented to the Court. However, the cash forecast is predicated on the assumption that all of the non-bankrupt lessors accept the proposed settlements. Since the failure to accept the Trustees' settlement proposal reduces the assets available to the reorganized company but also reduces the amount of securities to be issued, it does not appear that feasibility of the Plan would be impaired by the failure of the non-bankrupts to join in the Plan. The Trustees have offered evidence that the feasibility of the Plan would not adversely be affected by the failure to have these matters resolved before consummation, and no one has challenged that conclusion. It should be noted, however, that the eventual resolution of the disputes between the reorganized company and the non-bankrupt lessors may be either more or less favorable to the Trustees than the terms of the Plan.

C. THE "COMPROMISE" FEATURES OF THE PLAN

In order to achieve this Plan, the Trustees have negotiated compromise settlements with the Federal Government; the group of banks holding the pledge of all of the stock of Penn-co; the New Haven Trustee; and others. Unless these compromise settlement arrangements—particularly those with the Federal Government and the bank group—are approved as reasonable, there can be no Plan of Reorganization.

Before discussing the reasonableness of each of the major compromise proposals, it is well to have clearly in view the legal standards which must govern the Court's judgment in the matter. It is firmly settled that a Plan may be approved which embodies compromise resolution of conflicting contentions, if the approval is based upon an informed evaluation of the strengths and weaknesses of the respective contentions, the likelihood, duration and expense of litigation which would otherwise be necessary, and the range of probable litigation results. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968). Where the Trustees and particular parties have in fact reached a compromise settlement of their conflicting contentions, those are the governing criteria.

Essentially the same criteria are applicable in instances where no actual compromise agreement has been reached, but the Plan nevertheless resolves the dispute, *i.e.*, where the Trustees have in effect proposed a compromise resolution of the controversy, and ask the Court to approve and implement it as being fair and reasonable.

In both situations, approval of the suggested resolution of the controversy may substantially affect the interests of others who are not direct parties to the compromise, or to the negotiations and discussions which produced the agreed-upon or suggested solution. It is therefore necessary that all affected parties have an opportunity to be heard.

A hypothetical example may be useful here. Assume creditor X asserts a claim for $1 million, but the Trustees contend that the estate's liability is only $500,000. Assume further that if creditor X is allowed more than $600,000 from the estate, there will not be enough left in the estate to pay

creditor Y in full. The Trustees and creditor X agree to settle the claim for $750,000. Creditor Y is, of course entitled to be heard on the fairness and reasonableness of the compromise. But if, after a full opportunity for all concerned to present both evidence and argument, the reorganization court is satisfied that the proposed compromise is fair and reasonable in light of the strengths and weaknesses of the contentions of creditor X, the Trustees, and creditor Y, the costs and delays litigation would involve, and the range of probable outcomes of litigation, the Court may approve a Plan which embodies that compromise resolution. The fact that creditor Y was not a party to the settlement, and did not participate in the negotiations which produced it, is immaterial. His rights are fully vindicated in the hearing process. The objective tests of fairness and reasonableness are controlling.

Ordinarily, if the only item in dispute is the correct amount of a claim, there would be no occasion for the Trustees to propose a compromise resolution which was not agreed to by the creditor directly involved; it would be simpler to have the claim summarily adjudicated pursuant to the program for proofs of claim. But when more complicated disputes arise, as they inevitably do in any complex reorganization case, what amounts to a compromise resolution of a dispute must often be proposed in the absence of actual agreement between the parties directly involved. The words uttered by the Supreme Court a century ago still ring true today:

> Railroad mortgages . . . are peculiar in their character and affect peculiar interests. The amounts involved are generally large, and the rights of the parties oftentimes complicated and conflicting. It rarely happens that a foreclosure is carried through to the end without some concessions by some parties from their strict legal

> rights, in order to secure advantages that could not otherwise be attained, and which it is supposed will operate for the general good of all who are interested. This results almost as a matter of necessity from the peculiar circumstances which surround such litigation.

Fosdick v. Schall, 99 U.S. 235, 252 (1878).

The Plan now before the Court incorporates a host of compromises of various kinds. They include actual compromise settlement agreements; provisions of the Plan which carry out what the Trustees regard as a fair and reasonable adjustment of unresolved disputes; and underlying assumptions, concerning such matters as the Valuation Case, based upon judgments which have been arrived at through a process closely akin to compromise. The agreed-upon or proposed compromise settlements include disputes between the Trustees and particular claimants or classes of claimants regarding the amount or nature of the claims, and disputes between classes of creditors. Included in the former category is the important proposal that the complex relationships between Penn Central and the 15 Secondary Debtors be resolved by cancelling all mutual claims, paying off the public holders, and treating the Secondary Debtors' assets as assets of Penn Central. An illustration of the compromise resolution of a dispute between classes is the treatment of tax claims. In such cases, each party to the dispute receives less favorable treatment than would be appropriate if all disputed issues were resolved in its favor, but more favorable treatment than would be appropriate if it should litigate and lose.

The distinction between settlement agreements and compromises which have not actually been agreed upon (a distinction which, as discussed above, is not crucial for

present purposes) is sometimes difficult to draw. The compromises of the claims of the United States Government, the Pennco pledge dispute, the claims of the Secondary Debtors, and the claims of the New Haven Trustee have all been expressly agreed upon. On the other hand, there is not unanimous agreement by the taxing authorities concerning the treatment of state and local tax claims, although most such claimants who have participated actively in the Plan proceedings now support the Plan.

The compromise-like assumptions related to the Valuation Case problem stem from the fact that neither the amount to be received by the estate in exchange for the rail properties conveyed to ConRail, nor the timing of its receipt, is now known. Thus, any Plan proposed before the Valuation Case litigation is concluded must take these uncertainties into account; the assumptions must be within the reasonable range of probable litigation results. As discussed in detail in Section II-B, the Plan deals with the uncertainties of the Valuation Case through the issuance of a mix of securities designed to reflect both the risks and the potential rewards of the Valuation Case.

While each compromise settlement, compromise proposal and compromise-type assumption must be evaluated individually, the importance of viewing the Plan as a cohesive unit cannot be over-emphasized. All of the compromises are closely interrelated. In a very real sense, the Plan is the sum of all of its compromises. The fairness and equity of the treatment accorded to any class or member thereof must be evaluated in the context of the Plan as a whole.

To recapitulate, a reorganization court unquestionably has the power to approve a plan which embodies compromise resolutions of disputed issues notwithstanding the objections

of persons directly or indirectly affected by the compromises. This does not mean that legitimate contentions may be disregarded. Rather, they must be taken into account in determining whether the Plan does or does not provide fair and equitable treatment. The issue is not merely whether there are objections to a particular compromise, but whether the objections are persuasive. No one creditor or group of creditors can be permitted to insist upon litigating every contention to finality, if that very process would frustrate a reorganization which is in the best interests of all creditors.

Perhaps the most striking feature of the Plan proceedings has been that, notwithstanding the welter of objections, counterproposals, charges and counter-charges, it appears that no one has consciously advocated abandoning the attempt to achieve a Plan of Reorganization at this time. And there is almost equally unanimous agreement on the proposition that retention of Pennco as the operating core of the reorganized company is essential. As an assessment of the economic realities of the situation, this business judgment is undoubtedly sound, as noted in the SEC Report. In view of the ramifications, intended or unintended, of some of the arguments presented, however, the Court must initially consider whether present approval of a Plan of Reorganization, with its attendant compromises, unfairly prejudices senior creditors whose claims might otherwise be more promptly satisifed. Arguably, if that were the case, the Plan should not be approved, no matter how globally beneficial it might be.

At first blush, it would seem theoretically possible to simply liquidate all retained assets immediately, pay the proceeds to top-ranking claimants in descending order of priority, await the outcome of the Valuation Case, and then complete the liquidation process by distributing the proceeds as far

down the priority ladder as they would reach. While this course of action would undoubtedly produce less total benefit for the creditors than would a Reorganization Plan, it would theoretically produce more immediate payment to the senior creditors whose claims are entitled to priority treatment.

Upon analysis, however, it becomes immediately apparent that in the absence of compromise, even that simplistic and draconian result could not be achieved any more speedily than a Plan of Reorganization which provides greater benefits for all. The reason lies in the nature and complexity of the legal issues which, in the absence of compromise, would have to be litigated.

In their evidentiary submission, the Trustees have spelled out in some detail the major sources of potential litigation. These include the disputes concerning the relative priority of governmental claims, state, local and federal; the validity of the Pennco pledge agreement; a host of issues concerning the coverages of various mortgages and the correct application of marshalling principles; and what is perhaps the most significant but least understood problem, unraveling the intricate relationships between the Debtor and the Secondary Debtors. And even if these disputes could be finally resolved through litigation by the early 1980s, as the Trustees assume, there is another aspect of the matter which the Trustees appear to have somewhat underestimated. All of these disputes are interrelated. Generally speaking, the highest-priority claims must be finally resolved before distribution to lower classes could begin. For that reason, until the highest-priority claims are known, it is virtually impossible to determine correctly the treatment which lower classes of claims should receive. It is unlikely, therefore, that litigation of all of these major disputes could efficiently be pursued simultaneously.

Stated otherwise, if the litigation proceeded simultaneously, it might well be necessary, upon completion of one round of litigation, to commence an entirely new round of litigation in order to determine how the results of the first round of litigation should be implemented (either in a Plan of Reorganization, or in the hypothetical liquidation distributions).

Until the validity and priority of the Government claims were finally determined through litigation, no distributions of any kind could be made. Until the issues surrounding the state and local tax claims were determined through litigation (Section II-F), distributions to bondholders would seem unlikely. Perhaps more importantly, until the amount of the recovery in the Valuation Case became known, it would be impossible intelligently to work through the problem of allocating unpaid administration claims among the various mortgages, rendering distribution impossible. And until the Secondary Debtor issues were resolved, those assets would not be available for Penn Central creditors.

Thus, achieving a Plan at this time would expedite, rather than delay, distributions to senior claimants as well as junior claimants, and there is no valid reason for rejecting the obvious overall economic advantages reorganization would entail.

The final, and equally obvious, point to be made is that there simply can be no reasonably prompt Reorganization Plan which does not embody compromise solutions of these litigable issues. The true choice, then, is among prompt achievement of a beneficial Plan which provides some immediate distributions to creditors and greater distributions in the long run, or holding matters in abeyance until all

litigation, including the Valuation Case litigation, is concluded, and then attempting to achieve a Plan, or pursuing the economically wasteful course of a liquidation in which distributions to creditors would be withheld for many years. The choice is obvious.

Therefore, the issue is not whether the Plan should be disapproved because it embodies compromises which are objected to, but whether the proposed compromises are fair and reasonable.

D. MAJOR COMPROMISES

1. United States Claims

The principal compromise settlement agreement embodied in the Plan deals with the major claims of the Federal Government. These include $50 million, plus interest, due on trustees certificates in default since 1976, and approximately $350 million due or to become due under the § 211(h) program. In addition, the Government has guaranteed the balance of $50 million in trustees certificates, which fall due in 1986.

On January 18, 1977, after hearing, I entered Order No. 2744, granting preliminary approval to the compromise arrangements which have now been embodied in the Plan. There were no significant objections to the proposed compromise at that time, and no actual objections to the terms of the compromise arrangements as such have been expressed at the present time. It is therefore unnecessary to spell out all of the details of the compromise agreement. The agreement resolves certain disputes between the Trustees and the Government concerning their respective rights and obligations under the § 211(h) program and the agency

agreement with ConRail. For present purposes, the significant features are that payment of the $50 million in defaulted trustees certificates is deferred until the consummation date under the Plan, and all other claims are deferred until the conclusion of the Valuation Case; and the Government agrees to accept the distributions provided for in the Plan, and to support the Plan. Without such deferrals, there obviously could be no Plan of Reorganization, and no claims of other creditors could be paid until the Government's claims were satisfied in full.

The Government reserved the right to withdraw from the settlement agreement unless certain conditions were met. The Trustees were required to agree to pay pre-bankruptcy personal injury injury claims in cash, and to extend to state and local taxing authorities a proposal for immediate compromise settlement of tax claims (see Orders No. 2921, 2922 and 2929); and it was stipulated that the Reorganization Plan must provide for full cash payment of all claims under $1,000. The Trustees agreed to the arrangements for financing the Government claims which are now set forth in the Plan, and also agree, *inter alia* not to attempt to exercise a right of setoff based upon the estate's claims for unconstitutional erosion. The latter agreement was, of course, without prejudice to the Trustees' right to pursue those claims before the Special Court or elsewhere.

I had no difficulty in approving this compromise settlement as reasonable when the issue was first before this Court, and my opinion remains the same. The primary reason is that there is no likelihood that a more favorable result could be achieved for the estate.

No doubt there are many arguments which could be raised against the validity of the Government's claims, or at least against the super-priority they have been accorded by statute.[33]

The range of possible litigation outcomes extends from full Government victory, the consequences of which are sketched above, and full victory for the estate, in which event conceivably the statutory prohibition against setoffs would be invalidated, and all of the Government's claims would be treated as part payment for the unconstitutional consequences of congressional treatment of the railroad, including the RRRA. Realistically, the likelihood of achieving that kind of result is not great, and the likelihood of achieving any favorable result of any kind within a reasonable span of time is simply non-existent. This was a negotiation in which the relative bargaining power of the adversaries was not exactly equal.

Apart from the timing question, some brief further discussion of the merits of the issues is perhaps justified, in view of the widespread feelings on these matters among Penn Central's creditors and stockholders.

I earlier expressed the view that requiring Penn Central to operate beyond October 1, 1973 would probably be unconstitutional. I followed very closely the development of the RRRA and, as one member of the three-judge court, agreed that it was unconstitutional in the absence of a Tucker Act

[33] It is unnecessary to consider what tribunals might have jurisdiction over such challenges. The SEC Report (pp. 82-83) after concluding that the Special Court would have exclusive jurisdiction over such matters, seems to assert that this also deprives the Reorganization Court of jurisdiction to assess the strengths and weaknesses of the competing arguments, and the range of reasonable litigation results, in passing upon the proposal to compromise these disputes. If that is the SEC's position, I believe it is incorrect.

remedy; and I further expressed the view that even a Tucker Act remedy would be too remote to satisfy constitutional requirements under these circumstances. The Supreme Court and the Special Court disagreed with this latter view. The RRRA, in tandem with the available Tucker Act remedy, is undoubtedly constitutional. The difficulty is that the statute as thereafter applied was quite different from the statute which was before the Supreme Court. It is conceivable that the consequences which, by amendment and other governmental actions and interpretations, have been permitted to flow from the present version of the statute, might not pass muster. But it must be recognized that constitutional challenges to governmental actions on the subject of bankruptcy have seldom been successful; the only authoritative judicial guidance as to the possible limitations of the bankruptcy power tends to include statements to the effect that whatever those limits may be, they have not been exceeded in the particular case under discussion.

Parties unimpressed by the Government compromise must also be cognizant of the stark fact that, rightly or wrongly, bondholders and stockholders of railroad enterprises simply are not objects of sympathy in the legislative halls of this nation. Hence, even a successful assault upon the validity of the Government claims and their priority would very likely merely lead to further legislation which might generate a further round of litigation.

Having said all of this, I hasten to add that I regard the compromise agreement with the Government as a generous one. It reflects a sincere effort on the part of the Government to rectify some of the rather harsh immediate consequences of the cash-flow crisis stemming from the conveyance. It has made possible the prompt payment of personal injury claims,

and at least a beginning of payment of tax claims. Whatever may be the propriety of having required the Debtor to go deeper into debt in order to provide rail service to the public during the planning and implementation of the RRRA, there is undoubted merit in an agreement to postpone collection of that additional debt so that the company can reorganize.

2. Settlement of Pennco Pledge Dispute

During the period between the merger and the bankruptcy, the Debtor obtained much of its working capital by means of a short-term, revolving credit arrangement with a consortium of banks, for whom Citibank acted as agent. Plans to achieve long-term mortgage financing did not materialize, initially because of unfavorable market conditions, and later because of the Debtor's rapidly deteriorating financial condition.

A few months before bankruptcy, the revolving credit arrangement was increased and modified. The Debtor pledged its Pennco stock to the Citibank group as collateral for a $300 million revolving credit authorization. Closing was held April 1, 1969. $200 million was drawn at the time of closing; of this amount, $100 million was used to satisfy the amount outstanding under the previous revolving credit arrangement. The entire $300 million was drawn down before bankruptcy.

No payments have ever been made on account of this indebtedness. Treated as a fully secured claim, entitled to interest at the contract rate, the claim would now aggregate in excess of $470 million. It would be secured by the asset—Pennco—which is absolutely essential to the success of this reorganization.

Early in the reorganization proceedings, various parties mounted a substantial challenge to the validity of the pledge of the Pennco stock. Those issues were fully litigated in connection with an earlier proposal for an amicable settlement between the Trustees and the bank group. When the proposed settlement agreement was rejected by this Court, *see In re Penn Central Transp. Co.*, 358 F. Supp. 154 (E.D. Pa. 1973) the impetus for prompt resolution of these disputes was removed. Since such matters are normally adjudicated in connection with the Plan proceedings, I was content to withhold decision in the matter, upon being advised that, for various reasons, the interested parties preferred to have the pledge issues remain in abeyance.[34]

The validity of the pledge was challenged by various parties, with varying degrees of intensity. The Trustees themselves remained neutral on the subject. Because many of the banks involved in the transaction were also Indenture Trustees for bondholders, it was necessary to appoint Special Representatives to look after the interests of the bondholders. These Special Representatives, and representatives of equity interests (commonly referred to as "the Robinson petitioners") were the principal proponents of the view that the pledge was invalid, although they disagreed to some extent concerning the consequences which should flow from such invalidity.

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[34] The Court was not made privy to the discussions, if any, which led to this informal understanding among counsel. It is fair to assume that each party considered the possible consequences of an adverse decision, the inevitability of appeals from even a favorable decision, the consequences of postponement of the decision, and the prospects for amicable resolution of the controversy. From the standpoint of the Court, the crucial consideration was the fact that preservation of the uncertain status quo would not be detrimental to any of the parties.

The facts giving rise to the challenge were these: Section 10 of the Clayton Act prohibits a railroad from selling its securities to any corporation having one or more directors who are also directors of the railroad, except pursuant to competitive bidding. Moreover, apart from the common director problem, transactions such as the revolving credit and pledge agreement require the approval of the ICC under Section 20(a) of the Interstate Commerce Act.

The transactions were structured as loans made by a small number of "lender banks"; but these lenders would then simultaneously assign part of the transactions to a large number of "participating banks". While there may be some dispute as to the extent to which the banks regarded these arrangements as legally binding among themselves, it is clear that the proposed participants were informed by Citibank from time to time as to the status of the negotiations, and that the identity of the participating banks and the amounts of their respective participations were known to Penn Central when the credit agreement was signed.

A couple of months before the final revolving credit arrangement became effective, a director of one of the lender banks was nominated to the Penn Central Board, and was actually elected a few days before the closing, although he did not attend any directors meetings until after the closing. There was uncontradicted evidence to the effect that he was not aware of the pending loan transaction, and that the bank was not aware of his impending Penn Central directorship. He did not disclose his bank directorship to the railroad, because he misunderstood the questionnaire the railroad required him to fill out, and was not aware of the possible conflict.

In addition to this problem, it developed that five of the participating banks, who participated in the transaction to the

extent of $57 million, had directors in common with the railroad throughout the relevant period. The parties were all aware of these interlocks, but assumed that they posed no problem because the participating banks were one step removed from the transactions between the Debtor and the lender banks; there were no direct negotiations or dealings between Debtor and the participating banks.

The arguments in support of the challenge may be summarized as follows: There was a clear, albeit unintentional, violation of § 10 with respect to one bank, and a violation of at least the spirit of the statute with respect to five additional banks. The Court should not countenance this transparent attempt to circumvent the competitive bidding requirements of § 10. Moreover, the failure to disclose any of these infirmities to the ICC amounted to a fraud against that agency, rendering its approval of the transaction nugatory. And, as a separate matter, the failure of the parties to disclose to the ICC the existence of "compensating balance" arrangements between the various banks and the Debtor (*i.e.*, "gentlemen's agreements" to maintain deposits at specified levels in the participating banks) further undercut the legitimacy of the transaction.

On behalf of the banks, the following arguments were presented: This was not a sale of "securities" subject to § 10. In any event, a transaction of this magnitude is not realistically susceptible to competitive bidding, hence Congress could not have intended that § 10 should be applied in this context. The terms of the loan transaction were unduly favorable to the railroad. The railroad obtained the full benefit of the loan transaction, and should now be required to comply with its terms. The banks had nothing to do with the proceedings whereby the approval of the ICC was obtained. Obtaining the approval of the ICC was clearly the responsibility of the railroad; it would be unthinkable to permit the railroad to avoid a $300 million obligation by reason of irregularities in its application to the ICC. Moreover, there were no such irregularities; the structuring of the direct transaction was appropriate; the ICC must have been aware of the common practice of using the "participation" device, and certainly was aware of the universal practice of compensating balances. The compensating balance arrangements were standard, were not lived up to by the railroad, and resulted in no detriment to the railroad. None of the parties was aware of the technical violation of § 20(a) in the one case, and the vast majority of the participating banks were not even aware of the interlocks which necessitated the participation arrangement. None of the interlock banks participated in any way in the negotiation of the terms of the credit agreement.

Having thus summarized the contentions of the parties with respect to liability issues, I now summarize briefly the range of possible litigation results. Assuming that the debt obligations issued by the Debtor pursuant to the revolving credit arrangement were "securities" within the meaning of § 10 (an easy assumption), and that the magnitude of the transaction and arguable ineffectiveness of competitive bidding do not exempt this transaction from application of the statute, it might nevertheless be concluded that the role of the participating banks does not amount to a violation of the statute, and that the technical violation should be simply ignored. Or, it might be held that the criminal penalties provided by § 10 of the Clayton Act and § 20(a) of the Interstate Commerce Act are exclusive, and that there is no civil liability apart from that specified in § 20(a). Section 20(a)(11) provides that securities issued without ICC approval are void, but that "securities issued in accordance with the terms and conditions of an authorization shall not be rendered void

because of the failure to comply with any provision of this section." The ICC did authorize the transaction. Its decision has not been challenged (and, arguably, could not be challenged in this Court); hence the securities are valid and enforceable. Acceptance of any of these arguments would fully vindicate the pledge.

If it were concluded that the Clayton Act was violated, and that a civil remedy should be fashioned, the remedy might include cancellation of the obligation; cancellation of the obligation, leaving the banks to an unsecured pre-bankruptcy claim for unjust enrichment; depriving the banks of the fruits of the transaction which occurred in technical violation of the Act, *i.e.*, either voiding their secured position in its entirety, or voiding their secured position to the extent of $100 million (the amount by which previously unsecured obligations were satisfied from the initial proceeds and thus converted into secured obligations); invalidating only the notes held by the conflicted lender; invalidating only the notes held by conflicted participants; invalidating the notes held by the conflicted banks and Citibank; treating the claims of the conflicted lender bank, and/or the conflicted participating banks, and/or Citibank, as unsecured, but treating the remaining claim as secured; reducing the aggregate amount of the claim by offsetting provable damages; or a combination of the foregoing.

If offsetting damages were held to be the appropriate remedy, the burden of proof would be of particular importance. It might be held that, in the absence of evidence that more favorable loan terms could have been obtained elsewhere, and in the absence of evidence that the railroad suffered any loss by reason of the "compensating balances," no damages are recoverable. Or it might be permissible to

presume damages in these circumstances. A middle ground might be to conclude that, since the purpose of the competitive bidding requirement is to prevent harm to the railroad from unduly generous terms, and since the entire transaction was intentionally structured so as to avoid the competitive bidding requirements of which all concerned were well aware, the proper remedy would be to preclude recovery for any interest in excess of the prime rate at that time.

A further issue, not involved in the earlier litigation, is the extent to which the bank's claim is secured. That is, assuming the pledge is fully valid, does the amount of the claim now exceed the value of the Pennco stock? If it does, then part of the claim should be treated as unsecured; but by the same token, this would strengthen the banks' argument that they should be permitted to foreclose on the pledge, and that the administration claims, including the Government's priority claims, may not invade their interest in Pennco.

The proposed Plan embodies a compromise resolution of all of these issues. The banks' total claim is fixed at $440 million. The banks further give up any rights they may have to assert a secured position by reason of the cash held on deposit when the bankruptcy petition was filed, or any priority arising from this Court's injunction against setoffs. With respect to the $440 million claim, the banks would receive the same treatment as other secured creditors. That is, the claim would be recognized as fully secured, but allocated as between retained and conveyed assets (61% retained, 39% conveyed).

I have no difficulty in concluding that the proposed compromise is fair. It is noteworthy that the compromise is accepted by the Special Representatives, as well as by the

Robinson petitioners. The latter, of course, would have standing only if the $300 million obligation were to be voided in its entirety; that is, equity interests are affected by the totality of the debt recognized, and not by distinctions between secured and unsecured.

Because the pledge issues were fully litigated, and indeed were the subject of a lengthy adjudication prepared (but not filed) by this Court, the task of evaluating the compromise in light of the probable litigation results, at least at the district court level, is uniquely straight-forward. Because the parties have resolved their differences, I do not propose to set forth in this Opinion the conclusions previously reached. It is sufficient to state that I regard it as extremely unlikely that the final outcome of the litigation would be total concellation of the indebtedness, or total disregard of the pledge; that it would be improper simply to ignore the statutory requirements; and that the most likely outcome of litigation would have been some form of modified treatment in the Plan of Reorganization. In short, I am satisfied that the Plan provisions represent an entirely acceptable compromise of the various disputes.

3. New Haven Trustee Claims

The New Haven Trustee asserted a secured claim in the total amount of $208.5 million (Library Doc. J-20.1) stemming from the inclusion of the New Haven in the Penn Central merger on December 31, 1968. The price to be paid by Penn Central for the New Haven properties was finally adjudicated by the Supreme Court shortly after Penn Central filed its reorganization petition. *New Haven Inclusion Cases*, 399 U.S. 392 (1970). The consideration was to have been principally composed of Penn Central common stock, but the

New Haven reorganization court had included an underwriting provision embodying a guarantee by Penn Central that the stock would be worth $87.50 per share. No express lien was created to support that guarantee, but in view of Penn Central's bankruptcy, the Supreme Court remanded the case for reconsideration of "the form that Penn Central's consideration to New Haven should properly take and the status of the New Haven estate as a shareholder or creditor of Penn Central." 399 U.S. at 489.

The New Haven reorganization Court imposed an "equitable lien" upon all of the former New Haven assets in the hands of Penn Central, because of what it regarded as the compelling equities of the situation. This decision was later vacated on appeal for lack of jurisdiction. In light of that litigation, and for the purpose of clarifying the status of the New Haven as a participant in the Penn Central reorganization proceedings, I concluded that the New Haven estate should be treated tentatively as holding "a lien, indeterminate in amount, and indeterminate as to priority, upon all of the real property and readily identifiable tangible personal property (exclusive of rolling stock) . . . conveyed to Penn Central" by the New Haven Trustee. *In re Penn Central Transp. Co.*, 337 F. Supp. 779, 791 (E.D. Pa. 1971). The New Haven Trustee also holds $34,025,800 of Penn Central Divisional First Mortgage Bonds secured by the properties previously owned by the New Haven, and the New Haven Trustee has also asserted various claims based upon alleged misrepresentation or fraud on the part of Penn Central's pre-bankruptcy management (Library Docs. J-20.28-29).

The extent to which any or all of these claims, even if secured claims, are secured by retained assets, is a further subject of controversy. They are at least secured by retained

assets to the extent of slightly more than $48 million and, depending upon how certain disputes concerning the New Haven's relationship to the Park Avenue properties might be resolved, may be secured by retained assets to the extent of an additional $86 million.

Under the settlement agreement, all of these disputes are resolved by according to the New Haven Trustee a secured claim in the sum of $121 million and an unsecured claim in the sum of $53 million. The settlement is well within the range of reasonably likely litigation possibilities, and the litigation would obviously be lengthy and expensive. It is significant that no one has expressed any objection to the settlement arrangement. I conclude that it is fair and reasonable, and should be incorporated in the Plan.

E. THE VALUATION CASE

1. Status of the Valuation Case

Pursuant to the RRRA, the Final System Plan prepared by USRA designated the properties to be conveyed to ConRail and set forth USRA's findings concerning the value of the conveyed properties and the consideration to be given in exchange. The Valuation Case is simply a *de novo* adversary proceeding[35] in which the Special Court will decide whether the terms of the exchange proposed by USRA meet the constitutional minimum standards of fairness and equity and, if not, what the terms should be to comply with that standard.

For purposes of this Opinion, it suffices to review briefly what some of the major issues are, and what decisions have thus far been expressed by the Special Court. This limited

[35] Section 303(c) of the RRRA does require the Special Court to give "due consideration to the findings contained in the Final System Plan."

review is essential to a clear understanding of the securities distributions proposed on the Plan, and is included only for that reason. Nothing in this Opinion should be interpreted as expressing or suggesting the views of this Court as to the merits of the Valuation Case litigation.

USRA based its initial findings in the Final System Plan upon the premise that the net liquidation value of the conveyed properties was the appropriate standard for compensation. Its definition of net liquidation value was rather complex[36], but in essence was based on two assumptions (1) that in the absence of the RRRA most of the Debtor's rail properties would have been sold to other carriers, and (2) the prices paid would have been established by the ICC at the levels which would have prevailed if there were no rail service in the Northeast at the time of the sale. On that premise, USRA assumed that the estate would be required to dismantle all rail-related physical structures and return the property to the condition it was in before dedication to rail service. For example, it assumed that all bridges and roadway electrification facilities would be removed, and all tunnels plugged. Thus, with the exception of rolling stock and salvageable rail and ties, all of the conveyed assets, in USRA's view, were to be valued at their prices for non-rail use.

USRA then constructed a Master Liquidation Plan hypothesizing that liquidation would have proceeded at the following pace: Year 1—18%; year 2—21%; year 3—18%; year 4—13%; year 5—10%; year 6—6%; year 7—2%; and subsequent years—10%. This projected rate of liquidation conformed to USRA's estimates of the time necessary to

[36] USRA's exposition of its approach is found in Chapter 5, and the appendix thereto, of the Final System Plan.

dismantle structures and otherwise prepare the properties for sale, and incorporated the prediction that the estate would wish to avoid saturating the market. By deducting the estimated expenses which would be incurred in the dismantling and liquidation process, USRA arrived at a net amount of proceeds to be received. The next step was to establish the date upon which such liquidation would have begun. USRA concluded that liquidation could not have commenced until after federal and state regulatory approvals were received, and fixed that date as January 1, 1979. On the assumption that the proceeds would be received over a period of more than seven years, commencing January 1, 1979, USRA then applied discount rates in order to reduce the future liquidation proceeds to their 1976 values. Applying these discounts (16% for land and 13% for other property) reduced the net proceeds by 57%. The end result of USRA's net liquidation analysis was that the appropriate value of Penn Central's conveyed assets was $485 million.

Section 303(b)(4) of the RRRA requires that "other benefits" to the estate from the exchange are to be considered in fixing the constitutional minimum standard. The statute does not define the term "other benefits." USRA set the value of "other benefits" to the Penn Central estate of $527 million.[37] Thus, when the Valuation Case litigation began, USRA's findings in the Final System Plan, if accepted by the Special Court, would have meant that the Penn Central estate should receive no recovery in that litigation.

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[37] The principal components of this figure were a projected savings of $287.7 million in additional administration expenses which would have accrued between 1976 and 1978, and the sum of $203.2 million representing USRA's estimate of the deficiency between the liquidation value of the equipment conveyed to ConRail, and the outstanding debt on that equipment assumed by ConRail.

After the Final System Plan was published, but before the conveyance, Congress enacted the Railroad Revitalization and Regulatory Reform Act of 1976, amending the RRRA. The statute now provides for Certificates of Value, which are new securities issued by USRA and backed by the full faith and credit of the United States, as a partial guarantee of the value of the ConRail securities the estates are to receive in exchange for their properties. Moreover, the amended statute requires the Special Court to make findings as to the amount, if any, of compensable unconstitutional erosion incurred by the estates and as to the net liquidation value of the conveyed properties. Compensable unconstitutional erosion is relevant in two contexts. The Special Court must take the amount of compensable unconstitutional erosion into account in determining whether the exchange meets the constitutional minimum standard of fairness and equity, and must include that amount, if any, in computing the redemption value of the Certificates of Value. The Certificates of Value represent an obligation on the part of the United States Government to pay in cash, not later than 1987, an amount equal to the net liquidation value of the assets, less "other benefits," plus compensable unconstitutional erosion, plus interest on the sum thus calculated, at the rate of 8% compounded annually, less the aggregate of the actual value of the ConRail securities on the date of redemption and any dividends which may have been paid thereon.

The Special Court has rendered two decisions addressing the major legal issues upon which the eventual outcome of the litigation will probably depend. The first of these concerns the meaning of "compensable unconstitutional erosion" *In re Valuation Proceedings under § § 303(c) and 306 of the Regional Rail Reorganization Act of 1973*, 439 F. Supp. 1351 (Special Ct. 1977) (*Erosion Opinion*); and the second concerns the

definition of "net liquidation value" and "constitutional minimum value." *In re Valuation Proceedings Under § § 303(c) and 306 of the Regional Rail Reorganization Act of 1973*, Misc. No. 76-1 (Special Court, Oct. 12, 1977) (*Valuation Opinion*) (slip. opin.). The purpose of both opinions is to establish a framework of ground rules to guide the parties in their trial preparations, and to guide the masters who are to conduct the evidentiary hearings. For that reason, neither opinion purports to represent the final and unalterable views of the Special Court on these issues, but it would be reasonable to assume that any party seeking reconsideration would bear a significant burden of persuasion. Both decisions are, of course, subject to eventual review by the Supreme Court.

Judge Friendly's opinion for the Special Court in the *Erosion Opinion* expresses the view that "unconstitutional erosion arises only when a losing business has been required to continue to operate against its will for more than a reasonable period," and that the term "against its will" means "that some identifiable agency of government having power to do so should have thwarted its desires [to cease operations]." 439 F. Supp. 1351 at 1356.

There are two kinds of erosion to be considered. Financial erosion refers to the creation of claims against the Debtor's estate which prime the claims of pre-bankruptcy creditors, both secured and unsecured; and physical erosion refers to the reduction in value of the physical assets, depletion of cash, etc. As the Special Court noted, the transferor's erosion claims are of great magnitude. For example, the Penn Central asserts that its claim for compensable unconstitutional erosion is approximately $900 million.

The Special Court fixed the date for the commencement of potential unconstitutional erosion at February 9, 1973, the date on which the President signed the Senate Joint Resolution which revoked the Trustees' work rule changes and mandated continued operation of the railroad. That was also the date on which Congress directed the Secretary of Transportation to devise a plan for the preservation of rail service in the Northeast; the Special Court regarded this direction to the Secretary of Transportation as an event which rendered futile any later applications for abandonment authority.

Establishing the February 9, 1973 date would have validated most of Penn Central's $900 million claim for unconstitutional erosion, except for the fact that the Special Court further concluded that, because of regulatory delays, Penn Central would not actually have been able to terminate rail operations until April 1, 1976. However, the Special Court added a caveat to this latter conclusion, namely, that the Trustees were free to try to prove that they could actually have terminated rail operations over some or all of the Penn Central system earlier than April 1, 1976.

The net effect of the *Erosion Opinion*, therefore, would seem to be that, unless the Trustees can persuade the Special Court that the ICC would have approved abandonment of portions of the system earlier than April 1, 1976, or that the federal courts would not have permitted abandonment proceedings to drag on for 38 months in the circumstances then prevailing,[38] there will be no award for pre-conveyance erosion.

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[38] *In re Central R.R. of New Jersey*, 485 F.2d 208 (3d Cir. 1973); *In re Penn Central Transp. Co.*, 355 F. Supp. 1343 (E.D. Pa. 1973).

Be that as it may, the *Erosion Opinion* does make clear the Special Court's view that that 38-month period "cannot be taken into account a second time in determining when the proceeds of sale would come into hand." 439 F. Supp. at 1366 n.28. Thus, it would seem that, apart from any other flaws in the Master Liquidation Plan embodied in USRA's Final System Plan, a major portion of its projected "other benefits" would be eliminated, and its projected 57% net discount of the liquidation proceeds would be substantially reduced.

It now appears, however, that USRA is completely revising its Master Liquidation Plan (now designated a "retrieval model"), and is also reassessing all aspects of its real estate valuation effort and re-calculating all of its estimates of sales of scrap.[39] In short, it appears that USRA will attempt to substitute its new theory of valuation—the retrieval model—and apply to that model data other than that used in the Final System Plan. At the present time, the results of these revisions are not available, and whether they will survive the adversary proceedings before the Special Court is a matter of conjecture.

In its October 12, 1977 *Valuation Opinion*, the Special Court did not reveal its views on the "other benefits" issue. It should also be noted that USRA has apparently revised its approach to the "other benefits" issues by eliminating the 1976-1978 administration claims component but adding many other items. As noted by the Special Court, "all these claims are hotly disputed by the transferors." Slip. opin. at 102.

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[39] The Government, including USRA's position is contained in "Statement of Government Parties Concerning Changes in Dismantling Model Assumptions and Continuing Work Efforts." Corp. Reorg. Reporter 1675:658.

The *Valuation Opinion* did provide some guidance to the parties on the valuation issues. The Court rejected USRA's contention that net liquidation value may be determined only on the assumption that all sales would be for non-rail use, and thus enabled the transferors to show what the properties would have sold for to other railroads. On the other hand, the Court excluded from consideration hypothetical sales to, or condemnations by, the United States Government, and also ruled out several of the more generous valuation theories espoused by the transferors (reproduction cost less depreciation, social value, etc.), and essentially concluded that fair market value and net liquidation value were synonymous.

While permitting the governmental parties to continue to assert that scrap value (the so-called "trash can" theory) is equivalent to net liquidation value, the Court also had this to say:

> While the cases previously reviewed [which used valuation approaches other than market value] do not carry the weight the transferors would give them, we cannot be wholly insensitive to the views that seem to underlie them. The courts rejected market value as the measure of just compensation in circumstances which made that measure suspect.
>
> Circumstances peculiar to this case make market value particularly hard to prove. The transferors face serious difficulties in proving alternative scenario sales [sales to profitable railroads or public entities other than the United States], and the amounts that would have been obtained from those sales. These difficulties are increased by the chilling effect, not disputed by the

Government, that serious discussion of the Rail Act had on the prospect of such sales. The discussion and enactment of the Act eliminated any incentive other parties might have had to negotiate purchases.

This does not mean that we should reject the role of market value in determining just compensation. Nor, however, should we bind a motion as fundamental as just compensation by the sterile logic of provable market value if a manifestly unfair result is produced. We may have such a situation here. It seems incredible that these 19,000 miles of railway and freight and passenger terminals, together with the equity in rolling stock, were worth only $685 million, the sum arrived at in the revised [Master Liquidation Plan] of March 1, 1976. It is nearly as unbelievable as the zero award in *PATH*. Of course, the revision of [Master Liquidation Plan] now in progress or attacks on it by the transferors may considerably augment this figure. It may also be that the transferors will succeed in showing a higher value by proving the potential salability of some of the property for rail use. The Government parties might be well advised not to be overly finical in their attitude toward such proof.

It suffices now to note that if the transferors should not be able to establish a figure for [net liquidation value], which would square with our notions of what constitutes 'just compensation,' we may be obliged to consider some other method to arrive at [constitutional minimum value]. This would not be to deny the thesis of the Government that value to the taker should not be considered. However, if the unique circumstances of this case make it impossible to establish a market value which

constitutes just compensation, it may be necessary to resort to some other rule.

* * *

If it should prove impossible to establish a market value which constitutes just compensation, the basis that now seems to us most deserving of serious consideration—whether as the sole basis or as one to be considered along with [net liquidation value] we need not now determine—is a basis related to original cost. In contrast to most condemnations, the property is not being converted to new uses; ConRail is being substituted for the transferors. In other words, ConRail has been put in roughly the same position it would have occupied had it made the transferors' original investment when they did and depreciated it at the proper rate. Thus, a figure related to original cost may have some relevance to the value of what is being transferred. We use the phrase 'related to' since not only must allowance be made for depreciation, but a further deduction might be justified to reflect physical deterioration beyond the point provided by the normal depreciation allowances but not constituting [compensable unconstitutional erosion]. ConRail is being substituted as the operator of a deteriorated railroad. Since ConRail must pay for the deterioration when it rehabilitates the property, the Government should benefit through a deduction in its purchase price (except insofar as the deterioration constitutes [compensable unconstitutional erosion]).

Slip. op. at 71-74.

To summarize, then, the governmental parties can take heart from the scrap value possibility and the exclusion of

reproduction cost and social values, as well as from the exclusion of hypothetical sales to the Government as influencing fair market value; and the transferors can derive encouragement from the Court's apparent skepticism toward USRA's valuation figures, and from the references to depreciated original cost as a measure of value.

2. Relationship of the Valuation Case to the Plan Distributions

The ultimate outcome of the Valuation Case litigation will be based upon an objective application of legal and constitutional principles, without regard to the question of how various classes of creditors of Penn Central would be affected by a greater or lesser recovery.[40] Any discussion of the potential impact of various possible levels of recovery in the Valuation Case upon the likelihood of redemption of the various securities to be issued under the Plan involves a risk that it will be misunderstood as indicating what a satisfactory conclusion of the Valuation Case litigation would be. That is not my function, and it certainly is not my intention. But I believe that at least a general understanding of the relationship between the Valuation Case litigation and the Plan distributions is necessary to an evaluation of the fairness and equity of the proposed distributions in order to ascertain

[40] In its *Valuation Opinion*, the Special Court urged the parties to explore the possibilities of amicable settlement of the entire controversy. Presumably, any such settlement would also be in conformity with legal and constitutional principles, or at least within the reasonably foreseeable range of results which would be obtained from litigating those legal and constitutional issues. No doubt the impact upon various classes of creditors would be a factor in any such negotiations. For purposes of this Opinion, it is plainly necessary to proceed on the assumption that the Valuation Case will not be settled; but this should not, of course, be regarded as an expression of disagreement with the Special Court's suggestion.

whether the Plan does or does not fairly allocate the risks and potential benefits that the Valuation Case entails.

The Plan contemplates that a substantial portion of the securities to be issued will be redeemed between consummation date and 1987, primarily from the proceeds of the Asset Disposition Program. The outcome of the Valuation Case will have no bearing upon those redemptions, and it is therefore appropriate for present purposes to consider only the securities which will remain outstanding in 1987. It is reasonable to suppose that by 1987, the principal amount of debt-type securities still outstanding will be approximately $1.487 billion, and that accrued but unpaid interest on those securities which are interest-bearing will aggregate approximately $481.3 million, for a total of $1.969 billion. Unless the net recovery from the Valuation Case is sufficient to pay off those securities, the Valuation Case will contribute nothing to the value of the common stock of the reorganized company. This does not mean that the common stock would have no value, but merely that its value would be dependent primarily upon the fortunes of Pennco.

At the risk of belaboring the obvious, it should also be pointed out that 90% of the common stock of the reorganized company is used to pay the claims of Penn Central's creditors; that is, a Valuation Case recovery sufficient to redeem the $1.969 billion in debt-type securities of the reorganized company would not translate into payment in full of Penn Central's creditors.

What level of Valuation Case recovery would be sufficient to provide for the redemption of that amount of debt-type securities by 1987? In attempting to answer that question, several factors must be kept in mind. The Certificates of Value, which will be the primary source of the cash to redeem

these securities, bear interest at the rate of 8% compounded annually, from and after April 1, 1976. The base amount of the CVs (*i.e.* the 1976 amount upon which interest is to be calculated) is geared to the outcome of the Valuation Case. While the base amount of the Certificates of Value therefore cannot be determined until the Valuation Case litigation is concluded, if that litigation terminates before 1987, USRA would have the right to pay off on the Certificates of Value before 1987.[41]

The Series B notes and Series C notes accrue interest, the Series D term notes and A and B bonds will not accrue interest if paid currently, preference stock and CBIs are non-interest-bearing. The rates of interest on some securities which accrue interest differ from the interest rate specified for the Certificates of Value. For that reason, payment of the Certificates of Value before 1987 would not have precisely the same consequences as would payment in 1987. By the same token, 1976 base values of the Certificates of Value would not translate into as large an amount of cash if the CVs are paid off earlier.

Subject to the foregoing variables, and assuming the cash forecast is accurate, it can be stated that a net recovery from the Valuation Case (*i.e.*, 1976 base value of the Certificates of

[41] As explained in the preceding section of this Opinion, the Certificates of Value amount to a Government guarantee that the Valuation Case award will be paid in cash if the value of ConRail securities issued to the transferors is insufficient to pay the award. In order not to complicate the analysis unduly, this Court (like the parties to this proceeding) has assumed that the ConRail securities will be valueless. If that assumption proves incorrect, the net result should nevertheless be the same. There is, however, at least a theoretical potential risk that if the value of the ConRail securities is disputed, the arbitrators who will resolve the dispute may make an erroneous determination. It is necessary and, in my judgment, not unsettling, to disregard that risk.

Value) in the amount of approximately $797 million, with interest thereon compounded annually at the rate of 8%, should produce enough money to redeem the remaining Series B notes, Series C notes, Series D notes, B bonds, preference stock and Certificates of Beneficial Interest (CBI), if the Certificates of Value are paid in 1987.

In view of the nature of some of the objections originally pressed, for example, by state and local tax claimants, it may be helpful to illustrate how Valuation Case recoveries at lower levels would affect redemption of the various classes of securities:

(in Millions)
Amount Outstanding
As of 12/31/87

	Prin.	*Int.*	*Total*	*Range of Base Values as of 4/1/76*
Series B notes	$249.8	$329.2	$579	0 -234.4
Series C1 notes		152.1	152.1	234.5-296
.....	131.2		131.2	296 -349
Series D	121.6	(2)	121.6	349 -398.3
B Bonds (1)	204.6	(2)	204.6	398.4-481.1
Preference Stock	567.3	(3)	567.3	481.2-710.8
CBI	213.2	(3)	213.2	710.9-797.1(4)

(1) Includes $6.6 million in accrued interest.

(2) Interest paid currently.

(3) Non-interest-bearing.

(4) By Order No. 2922, this Court authorized the Trustees to offer taxing authorities a cash payment settlement equal to the larger of 50% of the principal of their post-petition claims or 44% of the principal of their pre- and post-petition claims. To the extent this offer is accepted, there will be a reduction in the amount of C1 and D notes issued under the Plan. If all tax authorities accepted the offer, a base value of $633.2 million would satisfy the CBI. The figures incorporated in the above table assumes $25 million will be paid out under the cash settlement option.

It is difficult to quantify the impact of recoveries above the $797.1 million (1976 base value) level upon the value of the common stock of the reorganized company. The excess over what would be required to redeem the debt securities listed above would belong to the reorganized company and should have the effect of improving the quality of its securities, including common stock; but it would be somewhat misleading to suggest that any such recovery would increase the market value of the common stock dollar-for-dollar, or that it would necessarily be paid to the shareholders in dividends. About all that can be said on the subject at this juncture is that modest amounts recovered in excess of the amount needed to redeem the debt securities would presumably have little effect upon the value of the common stock; that recoveries at substantially higher levels would significantly enhance the value of the common stock;[42] and that the "reasonable range of litigation possibilities" in the Valuation Case is broad enough to encompass either eventuality.

* * *

L. EQUITY INTERESTS HELD BY PENN CENTRAL COMPANY

Penn Central Company owns 100% of the common stock of the Debtor. Under the Plan, it will receive 10% of the common stock of the reorganized company. This distribution would be impermissible if it were concluded that the Debtor is insolvent; that is, unless the total value of the Debtor's

[42] It must be remembered, however, that, since we are talking about common stock, any enhancement in value by virtue of 1987 payments must be discounted back to the consummation date, for purposes of comparing the dollar amounts of the claims of Penn Central's creditors with the actual dollar values of the distributions they will receive under the Plan.

assets (including, here, the proceeds to be received from the Valuation Case) exceeds the amount owed to its creditors, the present stockholders would not be allowed to participate in the Plan distributions or voting. In the comments summarizing the Plan (Section II-B), I pointed out that, since no finding of insolvency could now legitimately be made, the Trustees' proposal to permit equity interests to participate is reasonable and should be approved. Conversely, however, I am also persuaded that no greater participation than the Plan provides can be justified on the present record.

Penn Central Company itself supports the Plan. However, various individual stockholders of the Penn Central Company, in person or through representatives, strenuously object to the Plan provisions. Upon analysis, it is clear that many of these objections relate not to the Plan, but to the outcome of the Chapter XI reorganization of the Penn Central Company, a matter over which this Court has no control.

Much has been made by one shareholder of the value of the Debtor's coal assets. The impression sought to be conveyed is that the coal assets have not been properly valued. This simply is not accurate. The coal assets were a major aspect of the valuation of Pennco and have otherwise been the subject of intense management by Pennco and the Trustees. The SEC has discussed the coal properties in great detail in its report, and little would be served by repeating that discussion here.

The remaining objections are addressed, not so much to the Plan as to the governmental actions which, in the view of these objectors at least, created the circumstances which have made it impossible to achieve a Plan which would more favorably treat the equity holders.

I have carefully reviewed all of these objections, but have concluded that they do not justify rejection or modification of the Plan.

* * *

PART IV

A. CONSUMMATION DATE

After an Order is entered by this Court approving the Plan, the voting process will begin. At this juncture it is of course not possible to know what the result of the voting may be, or whether thereafter this Plan will be confirmed and consummated. It is nevertheless necessary at this time to address an issue which may arise if this Plan is ultimately consummated, but if the consummation date is, of necessity, postponed for one reason or another.

It is fair to state that the arguments presented at the Plan hearings were, for the most part, based upon the assumption that interest would run on all claims until December 31, 1977; that the consummation date would be approximately July 1, 1978; and that the securities would be issued as of the consummation date. Therefore, it is reasonable to suppose that a substantial delay in the consummation date would result in some deviation from the expectations of the parties. Because cash distributions would be postponed, the reorganized company should have accumulated more cash, from interim investments. Interest on B, C, and D notes would not begin to accrue until the postponed consummation date, hence, fewer of these securities would remain outstanding by 1987. Redemptions of the D serial notes and of the A and B bonds would not be affected, so long as the timetables of the existing Plan are adhered to.

The impact of these potential variations from the expectations of the parties is somewhat lessened, of course, by the fact that any net cash benefit to the reorganized company resulting from the delay would ultimately redound to the benefit of its stockholders, primarily the secured and unsecured claimants.

I am inclined to believe that substantial delay of the consummation date should not be permitted to alter the relationships among the various classes of claimants which are reflected in the Plan. That relationship could be maintained notwithstanding a delay in the consummation date if (1) interest on B, C and D notes were calculated as beginning to run on or about July 1, 1978; (2) the redemption provisions of the D serial notes and of the A and B bonds were given effect as stated in the Plan; and (3) those claimants entitled to receive cash distributions on consummation date, and who would not benefit from any equity participation in the reorganized company, should receive some further cash participation in the additional income earned by the reorganized company from interim investments during the period of postponement. This could perhaps be done by adding an appropriate amount of post-July 1, 1978 interest to the cash distributions on consummation date.

Of course, it must be recognized that the circumstances may be somewhat different when consummation date arrives, and it may then appear that there is legitimate need to retain the additional income from interim investments. I mention the matter at this time only so that all parties may be conscious of the uncertainties involved, and of the possible need for minor adjustments at consummation.[108]

B. CONCLUSIONS

In conformity with the views expressed in the foregoing Opinion, I now set forth this Court's conclusions with respect

[108] These issues have now been substantially resolved by Order No. 3451, entered March 15, 1978. Interest on all claims runs only to December 31, 1977; interest on Series C and D notes accrues from January 1, 1978; cash distributions to secured creditors and tax claimants on the Consummation Date will include some interest.

to the Plans of Reorganization of the Penn Central Transportation Company, and of the Secondary Debtors, as amended in conformity with the requirements of this Opinion:

1. The Plan complies with all requirements of law.
2. The Plan is feasible.
3. The Plan is fair and equitable.

Pursuant to these conclusions, when the Plan embodying the amendments required by this Opinion is filed with the Court, an Order will be entered approving the Plan and directing its submission to the voting process.[109]

Approval of this Plan marks an important milestone in the long and tortuous struggle toward a better tomorrow for the creditors and stockholders of the Penn Central Transportation Company and its affiliated companies. The Trustees and their staff, and the many other entities and individuals who have labored so long and diligently to produce this Plan are to be congratulated for their monumental achievement. Like all products of human endeavor, the Plan may not be perfect, but in my judgment it provides entirely fair and workable solutions to all of the complex and difficult problems confronting the Debtor's estate.

March 9, 1978
(Revised March 17, 1978)

/s/ JOHN P. FULLAM
John P. Fullam
United States District Judge

* * *

[109] The changes required have now been made. The Plan submitted for vote complies with the requirements of this Opinion and the Orders relating thereto.

Order Continuing Debtor in Possession With Authority to Operate its Business and Restraining Adverse Action

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Pennsylvania

In the Matter of:

PENN CENTRAL COMPANY,

Debtor.

In Proceedings for an Arrangement Under Chapter XI of the Bankruptcy Act

Cause No. .....

NOW, August 16, 1976, on consideration of the foregoing Petition of Penn Central Company, the Debtor herein, the Court being persuaded that the entry of its Order is in the best interest of the Debtor, its creditors and stockholders, IT IS HEREBY

ORDERED that Penn Central Company, the Debtor herein, be and it hereby is retained in possession of its assets and property, wherever located, and the Debtor is hereby authorized, as Debtor-in-Possession, to continue the operation of its business and maintain its property subject to such further orders as may be entered herein.

FURTHER ORDERED, that in connection with the operation of its business, the Debtor-in-Possession shall have full power and authority:

(a) to maintain its office and to continue the employment of its officers, Archibald deB. Johnson and Francis J. Tucker, and of the Debtor's clerical and office staff (provided that the compensation of the said officers shall not be increased without further order of the Court), and to purchase all merchandise, equipment, supplies and services and enter into such arrangements that may be necessary to maintain the regular operation of its office and of the Debtor's business;

(b) to continue to cover the cost of transfers of the Debtor's stock, subject to further order of the Court;

(c) to pay the rental incidental to the maintenance of its office and to keep the Debtor's property insured, and to pay such premiums as may be due therefor; and

(d) to pay all taxes and similar charges lawfully incurred in the operation of the Debtor's business.

FURTHER ORDERED that the Debtor-in-Possession is directed to file with this Court verified four-weekly reports of its operations, each such report to be filed no later than the fifteenth day next succeeding the four-week period for which such report is made. The first such report shall be filed on or before September 15, 1976.

FURTHER ORDERED that all debts and obligations incurred by the Debtor-in-Possession from and after the date of initiation of this proceeding, whether for salaries, or merchandise, supplies, services or other items purchased, leased or contracted for, by the Debtor-in-Possession, shall constitute obligations to be paid in cash, in full, when and as the same become due and said obligations shall be entitled to priority as expenses of administration.

FURTHER ORDERED that the bank accounts presently maintained by the Debtor at Central Penn National Bank shall be closed, and all funds presently on deposit to the credit of the Debtor in said accounts shall be transferred to new accounts to be opened in said bank, entitled "Penn Central Company, Debtor-in-Possession." All funds which may hereafter come into possession or control of the Debtor-in-Possession herein shall be deposited in such new accounts, or shall be deposited to the credit of the Debtor-in-Possession in other banks, as may be deemed desirable.

FURTHER ORDERED that banks holding funds of the Debtor-in-Possession are authorized and directed to honor any pay, out of all funds on deposit in the accounts to be opened by the Debtor-in-Possession, as hereinabove set forth, all checks hereinafter drawn by Penn Central Company, as Debtor-in-Possession, provided that every check in excess of $10,000 shall bear two signatures, one of which may be a facsimile signature.

FURTHER ORDERED, that in order to facilitate the operation of the business of the Debtor-in-Possession, no countersignature on behalf of this Court on checks to be issued by the Debtor-in-Possession shall be required.

FURTHER ORDERED, that the Debtor-in-Possession shall segregate and hold separate and apart on its books of account:

(a) all moneys due to the United States of America under Sections 3111 and 3301 of the Internal Revenue Code of 1954 (employer's F.I.C.A. and F.U.T.A. taxes);

(b) All moneys required to be withheld from employees, under Sections 3402(a) and 2102 of the Internal Revenue Code of 1954 (withheld income and F.I.C.A. taxes);

(c) Any other taxes required to be collected from others or imposed upon the Debtor-in-Possession under any law of the United States or of any state or any subdivision thereof.

FURTHER ORDERED that within the times prescribed by law, the Debtor-in-Possession shall remit the moneys specified in the preceding paragraph to the person or agency authorized to collect such tax or taxes and shall file all tax returns required in respect thereof by any law of the United States or any state or subdivision thereof.

FURTHER ORDERED that all persons, firms or corporations and entities including, but not limited to, the United States of America and the Commonwealth of Pennsylvania and other states, their respective departments, agencies and services, having or asserting any claim of any nature or description against the Debtor, or any of its property, be and each of them hereby is restrained and enjoined, until further order of this Court, from instituting or continuing any action, suit or proceeding of any nature or description against the Debtor or any of its property wherever located, or from in any way interfering with, seizing, attaching, garnisheeing, foreclosing or levying upon said property or causing any such or other judicial process to be issued or continuing such process against any or all of the property of the Debtor wherever located.

FURTHER ORDERED that the officers whose employment by the Debtor-in-Possession is authorized by this and subsequent orders of this Court be and they hereby are designated to perform the duties imposed upon the Debtor-in-Possession by the Bankruptcy Act and by orders of this court; provided, however, that such designation shall not affect the responsibility of any other person or persons chargeable under the law with the duties imposed upon by section 7b of the Bankruptcy Act, orders of this Court, or any other provisions of law.

JOSEPH S. LORD, III.
J.

Supreme Court, U. S.
FILED
JUN 28 1979
ROBAK, JR., CLERK

IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1978

No. 78-1775
No. 78-1776

JOSEPH A. SCHAFER, et al.,
DR. ROBIN S. KEY,
Petitioners

v.

THE PENN CENTRAL CORPORATION,
PENN CENTRAL COMPANY, et al.,
Respondents

On Petitions for Writs of Certiorari to the
United States Court of Appeals
for the Third Circuit

BRIEF IN OPPOSITION FOR THE PENN CENTRAL CORPORATION AND PENN CENTRAL COMPANY

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IN THE

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1978

No. 78-1775
No. 78-1776

JOSEPH A. SCHAFER, et al.,
DR. ROBIN S. KEY,
Petitioners

v.

THE PENN CENTRAL CORPORATION,
PENN CENTRAL COMPANY, et al.,
Respondents

On Petitions for Writs of Certiorari to the
United States Court of Appeals
for the Third Circuit

BRIEF IN OPPOSITION FOR THE PENN CENTRAL CORPORATION AND PENN CENTRAL COMPANY

OPINIONS BELOW

The judgments and opinion of the Court of Appeals are found in Petitioners' Appendix at pages A.1-36. The opinion of the Court of Appeals is not yet reported. The opinion of the Reorganization Court approving the Plan of Reorganization for Penn Central

Transportation Company (PCTC Plan) is reported at 458 F. Supp. 1234 and is found, in part, in the Appendix at pages A. 134-216. The Reorganization Court's opinion accompanying its order confirming the PCTC Plan is reported at 458 F.Supp. 1364 and is found, in part, in the Appendix at pages A. 107-130.

The order of the PCC Chapter XI Court confirming the PCC Plan of Arrangement is found in the Appendix at pages A. 46-48. The District Court's order affirming the confirmation of the PCC Plan of Arrangement is reproduced in the Appendix at page A. 44. The Court of Appeals has before it, but has not yet decided, Petitioner Key's appeal (C-A. No. 79-1573) from an order of the Chapter XI Court dismissing Key's complaint.[1]

QUESTIONS PRESENTED

1. Do Petitioners, who were stockholders of Penn Central Company, the sole stockholder of Penn Central Transportation Company, and whose appeals from orders relating to the PCTC Plan were dismissed for lack of standing, have standing to seek a review of the decisions below?

2. Assuming *arguendo* that Petitioners have standing, is there any basis for reviewing the decision

1. Dr. Key's Petition, insofar as it asks this Court to consider an appeal prior to judgment in the Court of Appeals, can be dismissed summarily. His case, which simply renews and embellishes the arguments made by Schafer, et al. in the PCC proceedings, clearly is not a case of imperative public importance that requires immediate resolution in this Court pursuant to Rule 20. *Cf.* New Haven Inclusion Cases, 399 U.S. 392 (1970); United States v. Nixon, 418 U.S. 683 (1974).

of the Court of Appeals that the PCTC Plan, which was approved and confirmed and which has been successfully consummated, made adequate provisions for Penn Central Company?

3. Did the court below properly determine that nothing in the United States Constitution, the Bankruptcy Act, or the Pennsylvania Business Corporation Law prohibited the duly elected directors of Penn Central Company from consenting to the PCTC Plan or from negotiating Penn Central Company's own plan of arrangement without vote of or individual written notice to its shareholders?

COUNTERSTATEMENT OF THE CASE

Petitioners, Joseph A. Schafer, et al. and Dr. Robin Key, are nine of approximately 150,000 former stockholders of Respondent, Penn Central Company (PCC), which, prior to the consummation on October 24, 1978 of the PCTC Plan under section 77 of the Bankruptcy Act, was the sole stockholder of Penn Central Transportation Company (PCTC or Debtor). PCC has itself been in reorganization under Chapter XI of the Bankruptcy Act. Respondent, The Penn Central Corporation (Penn Central), is the reorganized PCTC and successor to the Trustees of the property of PCTC (Trustees).

The PCC stockholders' petitions for writs of certiorari ask this Court to review the decisions of the United States Court of Appeals for the Third Circuit (A. 8-10, 13-36[2]) which: (1) dismissed for lack of standing the

2. References made herein to "A. " are to the Appendix to the stockholders' Petitions.

stockholders' appeals from orders of the United States District Court for the Eastern District of Pennsylvania (Reorganization Court) approving (Approval Order),[3] confirming[4] and directing the consummation of the PCTC Plan; and (2) affirmed decisions of the United States District Court for the Eastern District of Pennsylvania supervising PCC's reorganization proceedings under Chapter XI which confirmed PCC's Plan of Arrangement and dismissed an adversary complaint filed by Petitioners against PCC.

The Court of Appeals dismissed each of Petitioners' appeals relating to the PCTC Plan on the grounds that, as stockholders of PCC, the sole stockholder of PCTC, they lacked standing (a) to be heard in the Reorganization Court under Section 77(c)(13) of the Bankruptcy Act and (b) to appeal orders of the Reorganization Court. (A. 9-10, 13-36) Notwithstanding the dismissal of Petitioners' appeals for lack of standing, the Court of Appeals considered and rejected the merits of Petitioners' objection that the provisions of the PCTC Plan for the participation of PCC, as stockholder, were not fair and equitable. (A. 23-30) The Court also concluded that the PCC Plan of Arrangement did not require stockholder approval and did not overcompensate PCC's creditors. (A. 31-36)

The Reorganization Court's comprehensive opinions approving and confirming the PCTC Plan (A. 137-216, 99-130) and the opinion of the Court of Appeals

3. In re Penn Central Transportation Co., 458 F. Supp. 1234 (E.D. Pa. 1978).

4. The opinion of the Reorganization Court accompanying the confirmation and consummation orders is reported in: In re Penn Central Transportation Co., 458 F. Supp. 1364 (E.D. Pa. 1978).

(A. 13-36) thoroughly considered the basis of PCC's participation under the PCTC Plan in the context of the massive administration, secured and unsecured claims against PCTC and the overriding uncertainties concerning the value and availability of the Debtor's assets to satisfy such claims. Rather than to attempt to repeat all of those facts here, Penn Central and PCC respectfully refer the Court to the opinions below and will review only the salient features of the PCTC Plan and the PCC Plan of Arrangement affecting the treatment of PCC and its stockholders.

Under the PCTC Plan, PCC, as stockholder of PCTC, received 10% of the common stock of the reorganized PCTC. Pursuant to PCC's Plan of Arrangement, its stockholders received 40% of the stock of Penn Central distributed to PCC, or 4% of the common stock of Penn Central. The remaining 60% of the Penn Central stock received by PCC, or 6% of the total amount of common stock, was distributed to holders of Swiss franc notes issued by PCC who asserted a claim against PCC in excess of $150 million. That claim was secured by a pledge of 35% of PCC's stock holdings in PCTC.

As the Court of Appeals noted, PCC's participation in the PCTC Plan resulted from a basic assumption that the PCTC estate was solvent. (A. 17) This assumption, in turn, was necessarily based on the probability that the eventual outcome of the proceedings in the Special Court established under the Regional Rail Reorganization Act of 1973, 45 U.S.C. §§701-794 (Rail Act), to determine the value of the PCTC rail assets conveyed under the Rail Act (Valuation Case) would

yield a recovery sufficient to satisfy the claims of all the creditors and claimants of PCTC whose interests were superior to that of the stockholder. The Court of Appeals recognized, however, as the Reorganization Court stated in its Approval Opinion, that "if the Valuation Case should produce a very small recovery, the assumption of solvency would be incorrect." 458 F. Supp. at 1255. (A. 165)

The PCTC Plan resolved, through a series of compromises, the pervasive uncertainties concerning the value of PCTC's principal asset—its properties conveyed under the Rail Act—by according, to all but the very senior administration claimants, securities and stock whose value will ultimately be determined in whole or in part by the Valuation Case recovery. Thus, nearly all claimants, including PCC and its stockholders, stand to recover more or less than they might have otherwise if all of the assets of the Debtor could have been easily valued and made readily available for distribution. On the other hand, by offering an opportunity to participate in the reorganized PCTC prior to the expected conclusion of the Valuation Case in 1987, the PCTC Plan assured for all classes of participants, including PCC and its stockholders, some recovery realizable before the conclusion of the Valuation Case.

Following discussions and negotiations with various claimants in the PCTC proceedings concerning the interest, if any, to be accorded PCC under the PCTC Plan, PCC concluded that the PCTC Plan was fair and sought and obtained authorization from its Chapter XI

Court to support and vote to accept the PCTC Plan.[5] Notwithstanding PCC's vote in favor of the PCTC Plan, Petitioner Schafer and a few other individual stockholders of PCC objected to the approval of the PCTC Plan on the grounds that it was not fair and equitable to PCC. After a thorough analysis of the PCTC Plan and of the very extensive record before it, the Reorganization Court concluded that

> "[t]he Trustees' proposal to permit equity interests to participate is reasonable and should be approved. Conversely, however, I am also persuaded that no greater participation than the Plan provides can be justified on the present record." 458 F. Supp. at 1343. (A. 213)

Petitioners later objected to the confirmation and consummation of the PCTC Plan, again on the grounds that it was not fair and equitable to PCC, and asserted that the vote of PCC in favor of the PCTC Plan was invalid. The Reorganization Court held that the objection must be denied for the reasons that "he [was] not a shareholder of the Debtor as required by §77(c)(13)." (A. 116) The Reorganization Court concluded that "the Plan's treatment of the Debtor's stock interest is fair and equitable." 458 F. Supp. 1371. (A. 121) In confirming the PCTC Plan, the Reorganization

5. PCC's motion for summary judgment on the stockholders' adversary complaint (which Petitioners omitted from their Appendix) showed by uncontested affidavits that the trustee for PCC's principal creditors—the holders of notes payable in Swiss francs in amounts in excess of $150 million—would have withheld the essential consent of those noteholders to PCC's Plan of Arrangement if PCC had risked the loss of the distribution of 10% of the new stock of the reorganized PCTC by failing to approve the PCTC Plan.

Court accepted as valid PCC's vote, but stated that, even if the vote could not have been considered valid, it would have exercised its "cramdown" power under section 77(e) of the Bankruptcy Act to confirm the PCTC Plan notwithstanding the absence of a valid acceptance by the stockholder. 458 F. Supp. at 1373. (A. 122)

Petitioners requested the Reorganization Court to stay the consummation of the PCTC Plan pending their appeal from the Approval Order and the conclusion of the Valuation Case. The Reorganization Court denied the request, stating:

> "Their standing in these proceedings is so dubious, and the merits of their arguments so tenuous, that the pendency of their appeal plainly does not justify delaying consummation." 458 F. Supp. at 1376. (A. 127)

Petitioners then sought a stay of the consummation in the Court of Appeals, which denied the request on October 17, 1978. (A. 42-43) On October 23, 1978, on the eve of the scheduled consummation of the PCTC Plan, Petitioners sought a stay from Mr. Justice Brennan, who denied the request the same day. (A. 41) Petitioners' second request for a stay, addressed to the Chief Justice and referred to the Court, was denied on November 13, 1978. (A. 40)

In its opinion of January 11, 1979, the Court of Appeals, after concluding that Petitioners lacked standing to appeal, rejected their assertions that the PCTC Plan did not provide fair and equitable consideration for the interest of PCC. The court below held that "the reorganization court exercised sound judgment in

concluding that the Plan provides fair treatment and compensation to the PCC." (A. 30) In addition, the Court of Appeals rejected Petitioners' argument that the combination of the PCTC Plan and the PCC Plan of Arrangement resulted in a deprivation of the stockholders' property rights under the Fifth Amendment. It held that "if . . . both the reorganization plan and the arrangement meet the requirements of Section 77 and Chapter XI respectively, no constitutional violation would exist." (A. 30-31)

Finally, the Court of Appeals analyzed the impact of the PCC arrangement proceedings on PCC shareholders and concluded that the satisfaction of the Swiss franc debt of over $150 million for 60% of PCC's shares in the reorganized PCTC did not over-compensate the noteholders. (A. 35) Accordingly, it affirmed the order confirming PCC's Plan of Arrangement.

Petitioners filed a motion for rehearing *en banc*. By order dated February 28, 1979, the Court of Appeals denied the motion. (A. 3-4) The stockholders then filed their Petitions for writs of certiorari on May 29, 1979.

REASONS FOR DENYING THE WRIT

I. Petitioners Lack Standing To Seek a Review of The Decisions Below as They Apply to the PCTC Reorganization.

Petitioners do not challenge the decision of the court below that they lacked standing to appeal under Section 77(c)(13) and Bankruptcy Rule 8-210. In the absence of any challenge to the decision on standing,

their Petitions may be denied without further consideration.

The Court of Appeals' concluded that, since Petitioners were stockholders of PCC, not of PCTC, they lacked standing to appeal orders of the Reorganization Court. This decision reaffirmed its earlier holding in *In re Penn Central Transportation Co.*, 455 F.2d 811 (3d Cir.), *cert. denied*, 407 U.S. 915 (1972). There, it was held that "the standing of a participant to a railroad reorganization to appeal from an order of the reorganization court turns on whether section 77(c)(13) of the Bankruptcy Act, 11 U.S.C. §205(c)(13) (1964), grants him a right to be heard." 455 F.2d at 815. The stockholders of PCC clearly did not fall within the class of persons having the right to be heard under section 77(c)(13), which provides that

> "the debtor, any creditor or stockholder, or the duly authorized committee, attorney or agent of either or the trustees or trustees of any mortgage, deed of trust or indenture pursuant to which securities of the debtor are outstanding shall have the right to be heard on all questions in the proceedings." 11 U.S.C. §205(c)(13).

Bankruptcy Rule 8-210 contains similar provisions:

> (a) *Standing to be Heard.*
>
> (1) The debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a Chapter VIII case.

Petitioners' interests in the PCTC reorganization proceedings were merely derivative of the interest of PCC, as stockholder of the Debtor, and were fully and adequately protected by PCC. For this reason, the courts below had earlier denied attempts by stockholders of PCC to intervene in the PCTC proceedings. *In re Penn Central Transportation Co.*, 454 F.2d 710 (3d Cir.), *cert. denied*, 406 U.S. 944 (1972); *In re Penn Central Transportation Co.*, 328 F. Supp. 1273 (E.D. Pa. 1971), *aff'd per curiam*, 455 F.2d 976 (3d Cir. 1972).

The fact that some of the Petitioners and other individual stockholders of PCC were permitted by the Reorganization Court to appear and file objections to the PCTC Plan did not confer upon them the status of parties or accord the stockholders of PCC the right to be heard in the PCTC proceedings. *In re Penn Central Transportation Co.*, 455 F.2d at 815, n.11; *Peckham v. Casalduc*, 261 F.2d 120 (1st Cir. 1958), *cert. denied*, 359 U.S. 958 (1959).

Although Petitioners blithely ignore their lack of standing below, they suggest that the decision in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1970), mandates that, under the peculiar circumstances of this case, they should be accorded appellate rights. The argument reveals that the issue is unique to this proceeding, but in any event *Mullane* has no relevance to the question of standing. That case dealt with the adequacy of notice to parties to a judicial settlement of a common trust fund and held that notice by publication in a local paper was inadequate for beneficiaries of the fund whose addresses were known and for whom notice by mail was not impracticable. It in no

way suggests that appellate rights must be given to the stockholders of the stockholder of the Debtor, where the stockholder itself, PCC, was a party which could have appealed and has adequately represented their interests. (A. 19-20)

II. Petitioners Had No Right to Individual Notice of Hearings In the Reorganization Court or Chapter XI Court.

Petitioners argue that *Mullane* suggests that the failure to give notice by mail of the hearings in the PCTC reorganization proceedings and hearings relating to the PCC Plan of Arrangement to each of the 150,000 stockholders of PCC was a violation of due process.

Mullane differs from the present case in two crucial aspects. First, it involved a judicial proceeding to settle the accounts of a trust fund which would have the effect of absolving the trustee of any liability for negligent or illegal impairments of the trust. Second, the property interest involved was the vested interest of the beneficiaries in the specific identifiable property which constituted the trust corpus. By contrast, in the present case the directors of PCC and the PCTC Trustees both were subject to court supervision and court orders and no question of impairment of any asset is present. More importantly, the dispute in this case does not concern specific identifiable property in which the stockholders of PCC had a vested interest; rather, Petitioners allege an interest in the unpredictable recovery from the Valuation Case. Indeed, as the record shows and the courts below found, there is a serious question whether the stockholders of PCC would recover anything after the payment of creditors if they awaited the outcome of the Valuation Case.

Equally important, the board of directors of PCC, unlike the guardian in *Mullane*, was elected by the stockholders themselves (except for one elected according to law as a replacement by the remaining directors). In fact, the stockholders could have called a meeting and removed the directors had they felt that the directors did not adequately represent the stockholders interests. Thus, the stockholders had not only picked their representatives in this case, but had a working control over them.

The provisions of Chapter XI of the Bankruptcy Act, 11 U.S.C. §§701-799, confirm the lack of merit in Petitioners' arguments. Chapter XI provides for a negotiation between a debtor (which may be a corporation) and its creditors of a plan for division of its assets in a way that will achieve the consent of a majority in number and amount of its classes of creditors to the modification or cancellation of their original claims. A plan may be filed *only* by the *debtor*, and a vote of its stockholders is accordingly not required by Chapter XI.

For appropriate action to formulate such a plan, one must look to the law governing the debtor corporation, here the Pennsylvania Business Corporation Law (BCL). Section 401 of the BCL, 15 Pa. Stat. Ann. §1401, provides that "the business and affairs of every business corporation shall be managed by a board of directors . . ." There is no provision in the BCL for submission of a proposed plan or plans to the stockholders. Moreover, once a plan is negotiated by the board with

creditors, filed by the board, properly accepted by the creditors and confirmed by the court, Section 320 of the BCL, 15 Pa. Stat. Ann. §1320(1) (A. 33), expressly permits a reorganization or arrangement under the Bankruptcy Act so confirmed by a court of competent jurisdiction to be put into effect without further action by the corporation's directors or stockholders.

Petitioners carefully omit to claim that they lacked actual notice of the proceedings. In fact, any claim by Petitioners that they lacked actual notice would be incredible. The highly publicized PCTC reorganization proceedings have been ongoing since 1970. Rather, they make the abstract assertion that they had a due process right to individual mailed notice, regardless of actual notice. A similar argument, based on *Mullane*, was rejected in *Bank of Commerce v. Board of Governors of Federal Reserve System*, 513 F.2d 164, 167 (10th Cir. 1975).

Moreover, each of the courts below, despite determining that the stockholders of PCC lacked standing, heard such stockholders as chose to participate and ruled on their contentions on the merits, finding in each case that the actions of the PCC directors were proper. Where the charge of an erroneous deprivation of Petitioners' property interest was actually heard and determined not to exist, no due process violation can be established. *See Carey v. Piphus*, 435 U.S. 247, 259 (1978). It was only after considering the stockholders' arguments that the Reorganization Court found that the PCTC Plan was fair and equitable to PCC under Section 77(e) of the Bankruptcy Act and that the Court of Appeals found that the PCC stockholders were not

prejudiced by the PCC Plan of Arrangement. (A. 30-31)

III. Petitioners' Challenge to the PCTC Plan Is, in Any Event, Without Substance.

Although the PCTC and PCC reorganization proceedings were large and complex, the case presented by Petitioners is simply not one that falls within the scope of this Court's Rule 19(b). There is no conflict between the decision of the court below and decisions of this Court or other courts of appeals. The statutes involved and the principles applied by the courts below are clear and unambiguous. Moreover, the provisions of the Bankruptcy Act in question have been repealed.

Petitioners' complaint on the merits is that the provision of the PCTC Plan which accorded to PCC, as the stockholder of the Debtor, 10% of the common stock of the reorganized company is unfair and inequitable. The issue was carefully canvassed by the Reorganization Court, 458 F. Supp. at 1343 (A. 212-13), and was accepted by the court below. The participation by PCC in the PCTC Plan was based on the assumption that the estate was solvent. The possibility of an enormous recovery in the Valuation Case, to which Petitioners allude, is tempered by the possibility that the recovery would not be large enough to render the estate solvent, in which case PCC would have been entitled to nothing. *Ecker v. Western Pac. R.R.*, 318 U.S. 448 (1943). The compromise of the issue by according PCC 10% of the common stock was agreeable to PCC and was accepted by the court below. Similarly, as the Court of Appeals

noted, the distribution to the PCC stockholders of the stock received by PCC was, by any reasonable measure, eminently reasonable. The suggestion (Schafer Pet. at pp. 17-18) that this Court should again review this issue in order to satisfy the PCC stockholders that justice had been done misconceives the function of this Court and plainly ignores the fact that the nine Petitioners appear to be the only PCC stockholders who reject the PCTC Plan and the PCC Plan of Arrangement.

Petitioners' further assertion that the court below should have provided the PCC stockholders with a contingent interest in the Valuation Case (Schafer Pet. at p. 19) also fails to establish a basis for granting their Petitions. The question before the Court of Appeals was whether the PCTC Plan was fair and equitable, not whether some vaguely defined alternative, which would have repercussions with respect to the treatment of all classes of creditors, should have been incorporated. *Ecker v. Western Pac. R.R., supra*, at 475-76.

A greater or different participation by the stockholder would have involved the compromise of the interest of the secured and unsecured creditors whose claims could not be satisfied by PCTC's retained assets alone. The Reorganization Court properly approved the Trustees' judgment, which was concurred in by PCC, that PCC's 10% equity participation in the reorganized PCTC was not only a reasonable compromise of the issue, but also fair and equitable. Those judgments were correctly endorsed by the Court of Appeals below. *Protective Committee for Independent Stock-*

holders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414 (1968).

Finally, it may be appropriate to respond to Petitioners' contention (Schafer Pet. at p. 19) that the PCTC Plan puts the creditors in control of a possible settlement of the Valuation Case, with the possibility that there will be no proceeds in excess of the creditors' claims. The creditors, of course, hold 90% of the common stock of Penn Central, and it is obviously in their interest to obtain the greatest possible Valuation Case recovery, which will equally benefit the 10% of the common stock allocated to PCC. The interests of the creditors and of the former stockholders are common, not conflicting.

CONCLUSION

With respect to the PCTC reorganization, Petitioners lack standing to ask the Court to review these matters. Even if Petitioners had the requisite standing, however, they raise no issue of general importance and no basis is shown for this Court to re-examine the PCTC Plan, which has been approved by the courts below and successfully consummated.

Similarly, the challenge to the PCC Plan of Arrangement raises no issue of general importance and shows no reason to disturb the completed arrangement approved by the courts below.

The Petitions should be denied.

Respectfully submitted,

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